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THE

# STATUTES OF OREGON.

ENACTED, AND CONTINUED IN FORCE, BY THE

# LEGISLATIVE ASSEMBLY,

AT THE

**Fifth and Sixth Regular Sessions thereof.**

OREGON
SUPREME COURT

OREGON·
ASAHEL BUSH, PUBLIC PRINTER

1855

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# ADVERTISEMENT.

In the side notes in this volume, are added frequent references to the New York Reports. They will be often found necessary, and at all times useful, in explaining the Text.

That part of the Oregon Statutes relating to the manner of commencing and prosecuting actions at law, are taken, word for word, from the New York Code. As the Code abolished the distinctions that formerly existed in civil actions, and modified the forms of practice in many essential respects, those who practiced under the old system will often find difficulty in understanding the provisions herein enacted; and to no other Reports can they refer, in cases of doubt, unless to those of New York. We have also incorporated that part of the New York Statutes which refers toExecutors and Administrators, and to Fraudulent Conveyances and Contracts.

To say anything in favor of the New York Reports, would be superfluous: they are acknowledged to be superior in legal erudition, and are, for this reason, referred to more frequently, by the legal writers of this country, than those of any other State. Until we have a settled system of Jurisprudence of our own, we must rely on the experience of our neighbor. The Editor, therefore, confidently hopes the references furnished to the following enactments will have the approval of the profession.

# EXPLANATION.

## ABBREVIATIONS USED IN REFERENCE TO THE NEW YORK LAW REPORTS AND CASES.

Barb.—Barbour's Reports, 17 vols.
Barb. Ch.—Barbour's Ch. Reports, 3 vols.
Cai.—Caine's Reports, 3 vols.
Cai. Ca.—Caine's Cases, 2 vols.
Coms.—Comstock's Reports, 4 vols.
Cow.—Cowen's Reports, 9 vols.
Denio—Denio's Reports, 5 vols.
Edw.—Edwards' Chancery Reports, 4 vols.
Hill—Hill's Reports, 7 vols.
Hoff.—Hoffman's Chancery Reports, 1 vol.
Hop.—Hopkins' Chancery Reports, 1 vol.
How.—Howard's Practice Reports, 9 vols.
John.—Johnson's Reports, 20 vols.
John. Ch.—Johnson's Chancery Rep'ts, 7 vols.
John. Ca.—Johnson's Cases, 3 vols.
Paige—Paige's Chancery Reports, 11 vols.
Sanf.—Sanford's Reports, 5 vols.
Sanf. Ch.—Sanford's Chancery Reports, 4 vls.
Wen.—Wendell's Reports, 26 vols.

# DECLARATION OF INDEPENDENCE.

## JULY 4, 1776.

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### THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

Preamble.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

Reasons thereof.

We hold these truths to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of those ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these colonies, and such is now the necessity which constrains them to alter their former system of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world:—

Grievances. He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature—a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise—the state remaining, in the meantime, exposed to all the dangers of invasion from without and convulsions within.

He has endeavored to prevent the population of these states—for that purpose obstructing the laws of naturalization of foreigners, refusing to pass others to encourage their migrations hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our Legislatures.

He has affected to render the military independent of, and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws—giving his assent to their acts of pretended legislation.

For quartering large bodies of troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas, to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsover.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attentions to our British brethren. We have warned them, from time to time, of attempts, by their Legislature, to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind—enemies in war; in peace, friends.

We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare that these united colonies are, and of right ought to be, FREE AND INDEPENDENT STATES; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that, as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent states may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine

Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

The foregoing declaration was, by order of Congress, engrossed, and signed by the following members:—

JOHN ADAMS,
SAMUEL ADAMS,
JOSIAH BARTLETT,
CARTER BRAXTON,
CHARLES CARROLL, of Carrolton.
SAMUEL CHASE,
ABRAHAM CLARK,
GEORGE CLYMER,
WILLIAM ELLERY,
WILLIAM FLOYD,
BENJAMIN FRANKLIN,
ELBRIDGE GERRY,
BUTTON GWINNET,
LYMAN HALL,
JOHN HANCOCK,
BENJAMIN HARRISON.
JOHN HART,
THOMAS HEYWARD, Jr.,
JOSEPH HEWES,
WILLIAM HOOPER,
STEPHEN HOPKINS,
FRANCIS HOPKINSON,
SAMUEL HUNTINGTON,
THOMAS JEFFERSON,
FRANCIS LIGHTFOOT LEE,
RICHARD HENRY LEE,
FRANCIS LEWIS,
PHILIP LIVINGSTON,
THOMAS LYNCH, Jr.,
THOMAS M'KEAN,
ARTHUR MIDDLETON,
LEWIS MORRIS,
ROBERT MORRIS.
JOHN MORTON,
THOMAS NELSON, Jr.,
WILLIAM PACA,
ROBERT TREAT PAINE,
JOHN PENN,
GEORGE READ,
CÆSAR RODNEY,
GEORGE ROSS,
BENJAMIN RUSH, M. D.
EDWARD RUTLEDGE,
ROGER SHERMAN,
JAMES SMITH,
RICHARD STOCKSTON,
THOMAS STONE,
GEORGE TAYLOR,
MATHEW THORNTON,
GEORGE WALTON,
WILLIAM WHIPPLE,
WILLIAM WILLIAMS,
JAMES WILSON,
JOHN WITHERSPOON,
OLIVER WOLCOTT,
GEORGE WYTHE.

# CONSTITUTION

OF THE

# UNITED STATES.

Preamble.

We, the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I.

### SECTION 1.

Legislative powers.

1. All legislative powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

### SECTION 2.

House of representatives; its members; by whom chosen

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state Legislature.

Qualifications of representatives.

2. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and taxes to be apportioned according to numbers.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers; which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed,

Actual enumeration every ten years.

First apportionment of representatives.

three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and, until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

Vacancies, how filled.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

Powers of the house.

5. The House of Representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

## SECTION 3.

Senators, how chosen.

1. The Senate of the United States shall be composed of two senators from each state, chosen by the Legislature thereof for six years; and each senator shall have one vote.

The Senate divided into three classes.

When vacated and filled.

Vacancies.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of thesixth year—so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any state, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Qualifications of senators.

3. No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

President of the Senate

4. The vice-president of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

Ib and other officers

5. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The sole power to try impeachments, in the Senate, &c.

6. The Senate shall have the sole power to try all impeachments: when sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Extent of judgment in cases of impeachment.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

## SECTION 4.

Elections for senators and representatives, how regulated.

1. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Meetings of Congress.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

## SECTION 5.

Each house judge of the election of its own members. Quorum.

1. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide

To determine its own rules, &c.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

To keep and publish journals, &c.

3. Each house shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secresy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Adjournment.

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

## SECTION 6.

Senators and representatives to be paid, &c. Privileges.

1. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and, for any speech or debate in either house, they shall not be questioned in any other place.

Disability to hold offices.

2. No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

## SECTION 7.

Revenue bills.

1. All bills for raising revenues shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to

The forms of proceeding on bills.

the president of the United States; if he approve he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But, in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Ib. on joint resolutions, except for adjournment.

3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary, (except on a question of adjournment,) shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

## SECTION 8.

Congress have power to lay taxes, &c.

1. The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post offices and post-roads:

8. To promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

9. To constitute tribunals inferior to the Supreme Court: To define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

10. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

11. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

12. To provide and maintain a navy:

13. To make rules for the government and regulation of the land and naval forces:

14. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions:

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress:

16. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings:—And,

17. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

## SECTION 9.

**Importation of certain persons not to be prohibited until after 1808.**

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

**Writ of habeas corpus**

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it.

**Bills of attainder, &c.**

3. No bill of attainder or *ex post facto* law shall be passed.

**Direct taxes**

4. No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

**No export duty; nor preference of one state to another, &c.**

5. No tax or duty shall be laid on articles exported from any state.

6. No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

**Money to be expended by legal appropriation only**

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

**Titles of nobility, &c.**

8. No title of nobility shall be granted by the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

### SECTION 10.

Powers forbidden to the states individually.

1. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

Powers which the states can exercise only under the sanction of Congress.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

## ARTICLE II.

### SECTION 1.

Executive power vested in a president, &c.

1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Electors of president and vice-president, &c.

2. Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. *

Meeting of the electors of president, &c. Their proceedings.

3. [The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant with the same state as themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Represenatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for president: and if no person have a majority, then, from the five highest on the list, the said house shall, in like manner, choose the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members, from two-thirds of the states, and

a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the vice-president.*] [*Annulled. See amendments, art. 12.]

4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States. Time of choosing electors.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States. Qualifications of the president.

6. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of said office, the same shall devolve on the vice-president; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president—declaring what officer shall then act as president; and such officer shall act accordingly, until the disability be removed, or a president shall be elected. In case of vacancy in the office of president, the vice-president to act, &c.

7. The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them. Compensation of the president.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect, and defend the constitution of the United States." The president to take an oath.

## SECTION 2.

1. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment. Powers of the president.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior offi- Ib.

cers, as they think proper, in the president alone, in the courts of law, or in the heads of departments.

Powers of president.

3. The president shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

### SECTION 3.

Other duties and powers.

1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them; and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

### SECTION 4.

Officers liable to impeachment.

1. The president, vice-president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

## ARTICLE III.

### SECTION 1.

Judicial power.

Judges to hold their offices during good behavior, &c.

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

### SECTION 2.

Extent of the judicial power

1. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls; —to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Original and appellate jurisdiction of the Supreme court.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases be-

fore mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Trial for crimes to be by jury, &c.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but, when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

### SECTION 3.

Definition of treason

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Congress to declare its punishment.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

## ARTICLE IV.

### SECTION 1.

One state to credit the public acts, &c., of another.

1. Full faith and credit shall be given, in each state, to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

### SECTION 2.

Reciprocity of citizens.

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Criminals flying from one state to another to be delivered up on demand.

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Runaways to be delivered up.

3. No person, held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

### SECTION 3.

New states may be admitted into the Union, &c.

1. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the Legislatures of the states concerned, as well as of the Congress.

Congress to have power over territory, &c.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other

property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

### SECTION 4.

Republican form of government guaranteed to each state, &c.

1. The United States shall guarantee, to every state in this Union, a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature, or of the executive, (when the Legislature cannot be convened,) against domestic violence.

## ARTICLE V.

Mode of amending this constitution.

1. The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution; or, on the application of the Legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the Legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

## ARTICLE VI.

Assumption of former debts.

1. All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution, as under the confederation.

This constitution, &c., the supreme law: the state judges bound thereby.

2. This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

Certain officers to take oath to support constitution.

No religious test.

3. The senators and representatives before mentioned, and the members of the several state Legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this constitution: but no religious test shall ever be required as a qualification to any office or public trust under the United States.

## ARTICLE VII.

Ratification.

1. The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September, in the year of our

Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America, the twelfth.

In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON,

President, and deputy from Virginia.

NEW HAMPSHIRE
John Langdon,
Nicholas Gilman.
MASSACHUSETTS.
Nathaniel Gorham,
Rufus King.
CONNECTICUT.
William Samuel Johnson,
Roger Sherman.
NEW YORK.
Alexander Hamilton.
NEW JERSEY.
William Livingston,
David Brearley,
William Patterson,
Jonathan Dayton.
PENNSYLVANIA.
Benjamin Franklin,
Thomas Mifflin,
Robert Morris,
George Clymer,
Thomas Fitzsimons,
Jared Ingersoll,
James Wilson,
Gouverneur Morris.

DELAWARE.
George Read,
Gunning Bedford, Jr.
John Dickinson,
Richard Bassett,
Jacob Broom.
MARYLAND.
James M'Henry,
Daniel of St. Tho. Jenifer,
Daniel Carroll.
VIRGINIA.
John Blair,
James Maddison, Jr.
NORTH CAROLINA.
William Blount,
Richard Dobbs Spaight,
Hugh Williamson.
SOUTH CAROLINA.
John Rutledge,
Chas. Cotesworth Pinckney,
Charles Pinckney,
Pierce Butler.
GEORGIA.
William Few,
Abraham Baldwin.

Attest, William Jackson, *Secretary.*

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[The following extract from the journals of Congress, shows the adoption of the constitution, and the time when it took effect.]

## IN CONGRESS.

Saturday, September 13, 1788.

On the question to agree to the following proposition, it was resolved in the affirmative by the unanimous votes of nine states, viz.: of New Hampshire, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Virginia, South Carolina, and Georgia.

The constitution declared to be ratified.

*Whereas*, The convention, assembled in Philadelphia pursuant to the resolution of Congress of the 21st February, 1787, did, on the 17th of September in the same year, report to the United States in Congress assembled, a constitution for the people of the United States; whereupon Congress, on the 28th of the same September, did resolve unanimously "that the said report, with the resolutions and letter accompanying the same, be transmitted to the several Legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the convention made and provided in that case:" *And, whereas*, The constitution so reported by the convention, and by Congress transmitted to the several Legislatures, has been ratified in the manner therein declared to be sufficient for the establishment of the same, and such ratifications, duly authenticated, have been received by Congress, and are filed in the office of the secretary; therefore,

Federal government to go into operation on the 4th of March, 1789.

*Resolved*, That the first Wednesday in January next be the day for appointing electors in the several states, which, before the said day, shall have ratified the said constitution; that the first Wednesday in February next be the day for the electors to assemble in their respective states, and vote for a president; and that the first Wednesday in March next, be the time, and the present seat of Congress the place, for commencing proceedings under the said constitution.

# AMENDMENTS

TO THE

# CONSTITUTION OF THE UNITED STATES.

[The following amendments were proposed at the first session of the first Congress of the United States, which was begun and held at the city of New York, on the 4th of March, 1789, and were adopted by the requisite number of states. Vol. I, Laws U. S., p. 72.]

[The following preamble and resolution preceded the original proposition of the amendments; and, as they have been supposed, by a high equity judge, (8th Wendell's Reports, p. 100,) to have an important bearing on the construction of those amendments, they are here inserted. They will be found in the journals of the first session of the first Congress.

CONGRESS OF THE UNITED STATES,

Begun and held at the city of New York, on Wednesday, the 4th of March, 1789.

The conventions of a number of the states having, at the time of their adopting the constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and, as extending the ground of public confidence in the government will best insure the beneficent ends of its institution—

*Resolved*, By the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both houses concurring, that the following articles be proposed to the Legislatures of the several states, as amendments to the constitution of the United States, all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid, to all intents and purposes, as part of the said constitution, namely:]

## ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Restrictions on the powers of Congress.

## ARTICLE II.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Right of the people to keep arms, &c.

## ARTICLE III.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Quartering of soldiers, &c.

## ARTICLE IV.

Search warrants, &c.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## ARTICLE V.

Proceedings against persons charged with crimes.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Their rights.

## ARTICLE VI.

Further rights.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, (which district shall have been previously ascertained by law,) and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

## ARTICLE VII.

Right of trial by jury.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

## ARTICLE VIII.

Excessive bail, &c.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

## ARTICLE IX.

Construction of constitution.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## ARTICLE X.

Powers reserved to the states.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

[The following amendment was proposed at the second session of the third Congress. It is printed in the Laws of the United States, 1st vol., p. 73, as article xi.]

## ARTICLE XI.

Restriction of judicial powers.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[The three following sections were proposed, as amendments, at the first session of the eighth Congress They are printed in the Laws of the United States, 1st vol, p 73, as article xii ]

## ARTICLE XII.

Mode of electing the president and vice-president of the United States.

1. The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and of the number of votes for each: which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president, shall be the president, if such a number be a majority of the whole number of electors appointed; and if no person have such a majority, then, from the persons having the highest numbers, not exceeding three on the list of those voted for as president, the House of Representatives shall choose, immediately by ballot, the president. But, in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

President.

Vice-president.

2. The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the vice-president: a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Ib.

3. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

NOTE.—Another amendment was proposed as article xiii, at the second session of the eleventh Congress; but, not having been ratified by a sufficient number of states, has not yet become valid as a part of the Constitution of the United States. It is erroneously given as a part of the constitution, in page 74, vol I, Laws of the United States

# TREATY WITH GREAT BRITAIN,

## OF LIMITS WESTWARD OF THE ROCKY MOUNTAINS.

**Concluded June 15th, 1846.**

*Proclamation by the President of the United States, August 5th,* 1846.

Preamble.

WHEREAS, a treaty between the United States of America and her majesty, the queen of the United Kingdom of Great Britain and Ireland, was concluded and signed by their plenipotentiaries at Washington, on the fifteenth day of June last, which treaty is word for word as follows:

Ratifications exchanged at London, July 17, 1846

Preamble.

Negotiators.

The United States of America, and her majesty, the queen of the United Kingdom of Great Britain and Ireland, deeming it to be desirable for the future welfare of both countries, that the state of doubt and uncertainty which has hitherto prevailed respecting the sovereignty and government of the territory on the northwest coast of America, lying westward of the Rocky or Stony Mountains, should be finally terminated by an amicable compromise of the right mutually asserted by the two parties over the said territory, have respectively named plenipotentiaries to treat and agree concerning the terms of such settlement; that is to say: The president of the United States of America has, on his part, furnished with full powers James Buchanan, secretary of state of the United States; and her majesty, the queen of the United Kingdom of Great Britain and Ireland, has, on her part, appointed the right honorable Richard Pakenham, a member of her majesty's most honorable privy council, and her majesty's envoy extraordinary and minister plenipotentiary to the United States; who, after having communicated unto each other their respective full powers, found in good and due form, have agreed upon and concluded the following articles:—

### ARTICLE I.

From the point on the forty-ninth parallel of north latitude, where the boundary laid down in existing treaties and conventions between the United States and Great Britain terminates, the line of boundary between the territories of the United States and those of her Britannic majesty, shall be continued westward along the said forty-ninth parallel of north latitude to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly, through the middle of the said channel, and of Fuca's Straits, to the Pacific ocean: *Provided, however*, That the navigation of the whole of the said channel and straits, south of the forty-ninth parallel of north latitude, remain free and open to both parties.

Boundary line between the U S and British possessions west of Rocky mountains. Navigation of channel between Vancouver's Island and the continent, and of Fuca's Straits, to be free.

## ARTICLE II.

From the point at which the forty-ninth parallel of north latitude shall be found to intersect the great northern branch of the Columbia river, the navigation of the said branch shall be free and open to the Hudson's Bay Company, and to all British subjects trading with the same, to the point where the said branch meets the main stream of the Columbia, and thence down the said main stream to the ocean, with free access into and through the said river or rivers, it being understood that all the usual portages along the line thus described shall, in like manner, be free and open. In navigating the said river or rivers, British subjects, with their goods and produce, shall be treated on the same footing as citizens of the United States: it being, however, always understood that nothing in this article shall be construed as preventing, or intended to prevent, the government of the United States from making any regulations respecting the navigation of the said river or rivers, not inconsistent with the present treaty.

Navigation of Columbia river to be free and open to Hudson's Bay Co, &c.

Not to be construed to prevent the U. S from making regulations for navigation of said river.

## ARTICLE III.

In the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson's Bay Company, and of all British subjects who may be already in the occupation of land or other property lawfully acquired within the said territory, shall be respected.

Possessory rights of the Hudson's Bay Co. and all British subjects to be respected.

## ARTICLE IV.

The farms, lands, and other property of every description belonging to the Puget's Sound Agricultural Company, on the north side of the Columbia river, shall be confirmed to the said company. In case, however, the situation of those farms and lands should be considered by the United States to be of public and political importance, and the United States government should signify a desire to obtain possession of the whole, or of any part thereof, the property so required shall be transferred to the said government, at a proper valuation, to be agreed upon between the parties.

Farms, &c., belonging to Puget's Sound Agricultural Co to be confirmed but may, under certain circumstances, be transferred to the U S

## ARTICLE V.

The present treaty shall be ratified by the president of the United States, by and with the advice and consent of the Senate thereof,

Ratification.

and by her Britannic majesty; and the ratifications shall be exchanged at London, at the expiration of six months from the date hereof, or sooner if possible.

In witness whereof, the respective plenipotentiaries have signed the same, and have affixed thereto the seals of their arms.

Done at Washington, the fifteenth day of June, in the year of our Lord one thousand eight hundred and forty-six.

JAMES BUCHANAN, [L. S.]
RICHARD PAKENHAM, [L. S.]

Recital of the ratification.

Ratifiers.

*And whereas*, The said treaty has been duly ratified on both parts, and the respective ratifications of the same were exchanged at London, on the seventeenth ultimo, by Louis McLane, envoy extraordinary and minister plenipotentiary of the United States, and Viscount Palmerston, her Britannic majesty's principal secretary of state for foreign affairs, on the part of their respective governments,—

Proclamation.

Now, therefore, be it known that I, JAMES K. POLK, president of the United States of America, have caused the said treaty to be made public, to the end that the same, and every clause and article thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

Attestation by the president of the U. S.

In witness whereof I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the city of Washington, this fifth day of August, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States, the seventy-first.

[SEAL.]

JAMES K. POLK.

By the President:

JAMES BUCHANAN, *Secretary of State.*

# ORDINANCE OF 1787.

## AN ACT TO PROVIDE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTHWEST OF THE RIVER OHIO.

*Be it ordained by the United States in Congress assembled*, That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

The territory to be one district, which may be divided, by Congress, into two districts.

*Be it ordained by the authority aforesaid*, That the estates both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them; and, when there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half-blood; saving in all cases to the widow of the intestate her third part of the real estate for life, and one-third part of the personal estate, and this law, relative to descents and dower, shall remain in full force until altered by the Legislature of the district. And, until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be, (being of full age,) and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person (being of full age) in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them relative to the descent and conveyance of property.

How the estates of intestates shall be divided.

No distinction between whole and half-blood.

Dower

How long this law shall remain in force.

Bequests and conveyances.

To whom this act shall not apply.

Governor, how appointed. Term of office. Qualifications.

*Be it ordained by the authority aforesaid*, That there shall be appointed from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office.

Secretary, how appointed. Term of office. Qualifications. Duties. Court; number of judges. Their jurisdiction. Qualifications. Term of office.

There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the Legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Governor and judges may make laws. How long such laws shall be in force.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress from time to time, which laws shall be in force in the district, until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards, the Legislature shall have authority to alter them as they shall think fit.

Military powers of governor.

The governor, for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same below the rank of general officers. All general officers shall be appointed and commissioned by Congress.

When the governor may appoint civil officers. General assembly to define their powers. Civil officers, how appointed.

Previous to the organization of the General Assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

Laws co-extensive with district. Governor may divide district into counties, &c.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district; and for the execution of process, criminal and civil, the governor shall make proper divisions thereof: and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature.

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the General Assembly; *Provided* That, for every five hundred free male inhabitants, there shall be one representative, and so on, progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the Legislature; *Provided*, That no person be eligible or qualified to act as representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: *Provided, also*, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

When division subject to alteration by the Legislature

Election of representatives.

The qualifications requisite for a representative.

The representatives thus elected shall serve for the term of two years, and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

Their term of office

When governor to issue a writ for election of a representative

The General Assembly, or Legislature, shall consist of the governor, Legislative Council, and a House of Representatives. The Legislative Council shall consist of five members, to continue in office five years unless sooner removed by Congress, any three of whom to be a quorum; and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the House of Representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council for five years, unless sooner removed. And the governor, Legislative Council, and House of Representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the General Assembly, when, in his opinion, it shall be expedient.

Legislative Assembly; of what it shall consist; their members, how chosen, &c.

Powers of the Legislative Assembly

Governor may convene and dissolve Assembly.

Before whom the governor, judges, &c., shall take an oath of office.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office—the governor before the president of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the Council and House of Assembly, in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating, but not of voting during this temporary government.

Delegates to Congress, how elected.

Their rights.

And for extending the fundamental principles of civil and religious liberty, which forms the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be formed in said territory; to provide, also, for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest:

Compact between states and the people in the territory.

*It is hereby ordained and declared, by the authority aforesaid,* That the following articles shall be considered as articles of compact between the original states and the people, and states in the said territory, and forever remain unalterable, unless by common consent, to wit:

## ARTICLE I.

Right of religious worship guaranteed persons.

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

## ARTICLE II.

Rights of persons and property.

The inhabitants of said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the Legislature, and of judicial proceedings according to the course of the common law. All persons shall be liable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate, and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide* and without fraud, previously formed.

## ARTICLE III.

Religion, morality and knowledge being necessary to good government, and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Schools to be encouraged. Good faith to be observed to the Indians: their rights and property to be respected. Laws for their protection.

## ARTICLE IV.

The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States, in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the Legislatures of the district or districts, or new states, as in the original states, within the time agreed upon by the United States, in Congress assembled. The Legislatures of those districts, or new states, shall never interfere with the primary disposal of the soil by the United States, in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands, the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost or duty therefor.

Territory and states to to be a part of the confederacy of the U S

Taxes.

Legislature not to interfere with Congress in the sale of land, nor tax U S property.

Navigable waters to the Mississippi and St Lawrence to be free to the people of the territories.

## ARTICLE V.

There shall be formed in the said territory, not less than three, nor more than five states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: the western state in the said territory shall be bounded by the Mississippi, the Ohio and Wabash rivers; a direct line drawn from the Wabash and Post Vincents, due north, to the territorial line between the United States and Canada; and by the said territorial line to the Lake of the Woods and Mississippi. The middle states shall be bounded by the said direct line, the Wabash, from Post Vincents to the Ohio, by the Ohio, by a direct line drawn due north from

Number of states that shall be formed from the territory.

Boundaries of such states.

Congress has the power to alter such boundaries.

When and how a state may be admitted into the Union.

the mouth of the Great Miami to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however*, and it is further understood and declared, that the boundaries of these three states shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And whenever any of the said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government: *Provided*, The constitution and government, so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than sixty thousand.

## ARTICLE VI.

Slavery nor involuntary servitude not to exist in the territory other than for crimes.

What fugitives from service may be reclaimed.

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: *Provided, always*, That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Resolutions of 23d April, 1784, repealed.

*Be it ordained by the authority aforesaid*, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the 12th.

CHARLES THOMPSON, *Sec'y.*

# ORGANIC LAW OF OREGON.

## PREAMBLE.

WE, the People of Oregon Territory, for purposes of mutual protection, and to secure peace and prosperity among ourselves, agree to adopt the following laws and regulations, until such time as the United States of America extend their jurisdiction over us.

Preamble.

*Be it enacted, therefore, by the free citizens of Oregon territory,* That the said territory, for purposes of temporary government, be divided into not less than three nor more than five districts, subject to be extended to a greater number when an increase of population shall require.

Territory divided into districts.

For the purpose of fixing the principles of civil and religious liberty, as the basis of all laws and constitutions of government that may hereafter be adopted—

*Be it enacted,* That the following articles be considered articles of compact among the free citizens of this territory:

## ARTICLE I.

SECTION 1. No person demeaning himself in a peaceable and orderly manner, shall ever be molested upon account of his mode of worship or religious sentiments.

Religious freedom.

SEC. 2. The inhabitants of said territory shall always be entitled to the benefits of the writ of *habeas corpus* and trial by jury, of a proportionate representation of the people in the Legislature, and of judicial proceedings, according to the course of common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate, and no cruel or unusual punishments inflicted. No man shall be deprived of his liberty but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared that no law ought ever to be made, or have force in said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, "*bona fide*" and without fraud previously formed.

Habeas corpus.
Jury.
Offences bailable
Fines and punishments
Compensation for property taken for public use.
What private contracts inviolable.

Education. Faith to be observed to Indians.

SEC. 3. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by the representatives of the people; but laws founded in justice and humanity shall, from time to time, be made for preventing injustice being done to them, and for preserving peace and friendship with them.

Involuntary servitude.

SEC. 4. There shall be neither slavery nor involuntary servitude in said territory, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted.

Arms; searches; freedom of press; no second trial; assemblages; petition.

SEC. 5. No person shall be deprived of the right of bearing arms in his own defence; no unreasonable searches or seizures shall be granted; the freedom of the press shall not be restrained; no person shall be twice tried for the same offence, nor the people deprived of the right of peaceably assembling and discussing any matter they may think proper, nor shall the right of petition ever be denied.

Powers of government, how divided.

SEC. 6. The powers of the government shall be divided into three distinct departments—the legislative, executive and judicial; and no person or persons belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted.

## ARTICLE II.

Legislative power, how vested; representatives, how chosen. Ib. in case of vacancy.

SECTION 1. The legislative power shall be vested in a House of Representatives, which shall consist of not less than thirteen, nor more than sixty-one members, whose numbers shall not be increased more than five at any one session, to be elected by the qualified electors at the annual election, giving to each district a representation in the ratio of its population, (excluding Indians,) and the said members shall reside in the district for which they shall be chosen; and in case of vacancy, by death, resignation or otherwise, the executive shall issue his writ to the district where such vacancy has occurred, and cause a new election to be held, giving sufficient notice, at least ten days previously, of the time and place of holding said election.

Speaker, &c., how chosen. Adjournments. Quorum. Attendance of members.

SEC. 2. The House of Representatives, when assembled, shall choose a speaker and its other officers, be judges of the qualifications and election of its members, and sit upon its own adjournment from day to day. Two-thirds of the house shall constitute a quorum to transact business, but a smaller number may adjourn from day to day, and may be authorized by law to compel the attendance of absent members.

Rules of order. Expulsion of members.

SEC. 3. The house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same offence, and shall have all powers necessary for a Legislature of a temporary government, not in contravention with the restrictions imposed in this organic law.

House may fix salaries of public officers.

SEC. 4. The House of Representatives shall, from time to time, fix the salaries of the different officers appointed or elected under this compact, provided the pay of no officer shall be altered during the term of his service; nor shall the pay of the house be increased by any law taking effect during the session at which such alteration is made.

Impeachment and consequence of.

SEC. 5. The House of Representatives shall have the sole power of impeaching; three-fourths of all the members must concur in an impeachment. The governor and all civil officers under these articles of compact, shall be liable to impeachment for treason, bribery, or any high crime or misdemeanor in office. Judgment in such cases shall not extend further than removal from office, and disqualification to hold any office of honor, trust or profit under this compact; but the party convicted may be dealt with according to law.

Power to levy taxes.

SEC. 6. The House of Representatives shall have power to lay out the territory into suitable districts, and apportion the representation in their own body. They shall have power to pass laws for raising a revenue, either by the levying and collecting of taxes, or the imposing license on merchandise, ferries or other objects—to open roads and canals, either by the levying a road tax, or the chartering of companies; to regulate the intercourse of the people with the Indian tribes; to establish post-offices and post-roads; to declare war, suppress insurrection or repel invasion; to provide for the organizing, arming and disciplining the militia, and for calling forth the militia to execute the laws of Oregon; to pass laws to regulate the introduction, manufacture or sale of ardent spirits; to regulate the currency and internal police of the country; to create inferior tribunals and inferior officers necessary, and not provided for by these articles of compact; and generally to pass such laws to promote the general welfare of the people of Oregon, not contrary to the spirit of this instrument, and all powers not hereby expressly delegated remain with the people. The House of Representatives shall convene annually on the first Tuesday in December, at such place as may be provided by law, and shall, upon their first meeting after the adoption of this instrument of compact, proceed to elect and define the duties of a secretary, recorder, treasurer, auditor, marshal, or other officers necessary to carry into effect the provisions of this compact.

Other powers.

When to convene

Executive powers.

SEC. 7. The executive power shall be invested in one person, elected by the qualified voters at the annual election, who shall have power to fill vacancies, to remit fines and forfeitures, to grant pardons and reprieves for offences against the laws of the territory, to call out the military force of the territory to repel invasion or suppress insurrection, to take care that the laws are faithfully executed, and to recommend such laws as he may consider necessary, to the representatives of the people for their action. Every bill which shall have been passed by the House of Representatives shall, before it becomes a law, be presented to the governor for his approbation. If he approve, he shall sign it; if not, he shall return it, with his objections, to the house, and the house shall cause the objections to be entered at large on its journals, and shall proceed to reconsider the bill; if, after such reconsideration, a majority of two-thirds of the house shall agree to pass the same, it shall become a law. In such cases the vote shall be taken by ayes and noes, and be entered upon the journals. If any bill shall not be returned by the governor to the House of Representatives within three days (Sunday excepted) after it shall have been presented to him, the same shall become a law in like manner as if the governor had signed it, unless the House of Representatives, by its adjournment, shall prevent its return, in which case it shall not become a law.

Term of office.

Salary.

The governor shall continue in office two years, and until his successor is duly elected and qualified; and in case of the office becoming vacant, by death, resignation or otherwise, the secretary shall exercise the duties of the office until the vacancy shall be filled by election. The governor shall receive the sum of            dollars per annum, as full compensation for his services, which sum may be increased or diminished at any time by law, provided the salary of no governor shall be altered during his term of service. The governor shall have power to convene the Legistature on extraordinary occasions.

Judicial power, how vested.

Judge of Supreme Court, how elected.

Jurisdiction of Supreme Court.

SEC. 8. The judicial power shall be vested in a Supreme Court, and such inferior courts of law, equity and arbitration, as may, by law, from time to time be established. The Supreme Court shall consist of one judge, who shall be elected by the House of Representatives, and hold his office for four years, and until his successor is duly elected and qualified. The Supreme Court, except in cases otherwise directed by this compact, shall have appellate jurisdiction only; which shall be co-extensive with this territory, and shall hold two sessions annually, beginning on the first Mondays in June and September, and at such places as by law directed. The Supreme Court shall have a general superintending control over all inferior courts of law. It shall have power to issue writs of *habeas corpus*, *mandamus*, *quo warranto*, *certiorari*, and other original remedial writs, and hear and determine the same. The Supreme Court shall have power to decide upon and annul any laws contrary to the provisions of these articles of compact, and whenever called upon by the House of Representatives, the supreme judge shall give his opinion touching the validity of any pending measure. The House of Representatives, may, hereafter, provide by law for the Supreme Court having original jurisdiction in criminal cases.

Oath of office.

SEC. 9. All officers under this compact shall take an oath as follows, to wit: I do solemnly swear, that I will support the organic laws of the provisional government of Oregon, so far as said organic laws are consistent with my duties as a citizen of the United States, and faithfully demean myself in office. So help me God.

Who entitled to vote.

SEC. 10. Every free male descendant of a white man, inhabitant of this territory, of the age of twenty-one years and upwards, who shall have been an inhabitant of this territory at the time of its organization, shall be entitled to vote at the election of officers, civil and military, and be eligible to any office in the territory: *Provided*, That all persons of the description entitled to vote by the provisions of this section, who shall emigrate to this territory after organization, shall be entitled to the rights of citizens after having resided six months in the territory.

Sec. 11. The election for all civil officers, provided for by this compact, shall be held the first Monday in June annually. Election when had

## ARTICLE III.

### LAND LAW.

Section 1. Any person now holding, or hereafter wishing to establish a claim to land in this territory, shall designate the extent of his claim by natural boundaries, or by marks at the corners and upon the lines of such claim, and have the extent and boundaries of said claim recorded in the office of the territorial recorder, in a book to be kept by him for that purpose, within twenty days from the time of making said claim: *Provided*, That those who shall be already in possession of land, shall be allowed twelve months from the passage of this act, to file a description of his claim in the recorder's office: *And provided further*, That the said claimant shall state in his record, the size, shape and locality of such claim, and give the names of the adjoining claimants, and the recorder may require the applicant for such record to be made to answer, on his oath, touching the facts. Claims how designated. Statement of claimant.

Sec. 2. All claimants shall, within six months from the time of recording their claims, make permanent improvements upon the same by building or enclosing, and also become an occupant upon said claim within one year from the date of such record, or in case not occupied, the person holding said claim shall pay into the treasury the sum of five dollars annually, and in case of failure to occupy, or on failure of payment of the sum above stated, the claim shall be considered as abandoned: *Provided*, That, no non-resident of this territory shall have the benefit of this law: *And provided further*, That any resident of this territory, absent on his private business for two years, may hold his claim by paying five dollars annually to the treasury. Claimant to make improvements or pay $5. Non-resident claimants

Sec. 3. No individual shall be allowed to hold a claim of more than one square mile, or six hundred and forty acres, in a square or oblong form, according to the natural situation of the premises. Nor shall any individual be allowed to hold more than one claim at the same time. Any person complying with the provisions of these ordinances, shall be entitled to the same recourse against trespass as in other cases by law provided. How much claimant may claim.

Sec. 4. Partnerships of two or more persons shall be allowed to take up a tract of land, not exceeding six hundred and forty acres to each person in said partnership, subject to all the provisions of the law; and whenever such partnership is dissolved, the members shall each record the particular parts of said tract as may be allotted to him, provided that no member of said partnership shall hold a separate claim at the time of the existence of said partnership. Partners.

* * *

**Boundary lines.** SEC. 5. The boundary lines of all claims shall hereafter conform, as near as may be, to the cardinal points.

**Officers.** SEC. 6. The officers elected at the general election, held on the first Tuesday in June, 1845, shall be the officers to act under this organic law, and their official acts, so far as they are in accordance with this compact, are hereby declared valid and legal.

**Amendments to this act how made.** SEC. 7. Amendments to this instrument may be proposed by the House of Representatives, two-thirds of the members concurring therein, which amendments shall be made public in all parts of Oregon, and be read at the polls at the next succeeding general election, and a concurrence of two-thirds of all the members elected at said election, may pass said amendments, and they shall become a part of this compact.

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## CERTIFICATE.

**Certificate.** I, John E. Long, secretary of Oregon territory, do hereby certify, that the foregoing is a true and correct copy of the original law as passed by the representatives of the people of Oregon, on the fifth day of July, A. D. 1845, and submitted to the people on the twenty-sixth day of the same month, and by them adopted, and now on file in my office.

J. E. LONG, *Secretary.*

# AN ACT

## TO ESTABLISH THE TERRITORIAL GOVERNMENT OF OREGON.

**August 14th, 1848.**

Temporary government established.

Proviso as to Indians.

Title to missionary stations confirmed.

Power to divide said territory reserved by Congress.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passage of this act, all that part of the territory of the United States which lies west of the summit of the Rocky mountains, north of the forty-second degree of north latitude, known as the territory of Oregon, shall be organized into, and constitute a temporary government, by the name of the territory of Oregon: *Provided*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to affect the authority of the government of the United States, to make any regulation respecting such Indians, their lands, property or other rights, by treaty, law or otherwise, which it would have been competent to the government to make if this act had never passed: *And provided also*, That the title to the land, not exceeding six hundred and forty acres, now occupied as missionary stations among the Indian tribes in said territory, together with the improvements thereon, be confirmed and established in the several religious societies to which said missionary stations respectively belong: *And provided further*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States.

The executive to vest in a governor; his tenure of office powers, duties and emoluments.

SECTION 2. *And be it further enacted*, That the executive power and authority, in and over said territory of Oregon, shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, shall be commander-in-chief of the militia thereof, shall perform the duties and receive the emoluments of superintendent of Indian affairs; he may grant pardons and respites for offences against the laws of said territory, and reprieves for offences against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of the said territory, where, by law, such commissions shall be required, and shall take care that the laws be faithfully executed.

Secretary; his duties and powers.

SEC. 3. *And be it further enacted,* That there shall be a secretary of said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceedings of the Legislative Assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the Legislative Assembly, within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence, semi-annually, on the first days of January and July, in each year, to the president of the United States, and two copies of the laws to the president of the Senate, and to the speaker of the House of Representatives, for the use of Congress. And, in case of the death, removal, resignation, or absence of the governor of the territory, the secretary shall be, and he is hereby authorized and required, to execute and perform all the powers and duties of the governor, during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

Secretary, when to act as governor.

Legislative Assembly of what to consist.

SEC. 4. *And be it further enacted,* That the legislative power and authority of said territory shall be vested in a Legislative Assembly. The Legislative Assembly shall consist of a Council and a House of Representatives. The Council shall consist of nine members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue three years. Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the members of Council of the first class, shall be vacated at the expiration of the first year; of the second class, at the expiration of the second year; and of the third class, at the expiration of the third year: so that one-third may be chosen every year; and if vacancies happen by resignation or otherwise, the same shall be filled at the next ensuing election. The House of Representatives shall, at its first session, consist of eighteen members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue one year. The number of representatives may be increased, by the Legislative Assembly, from time to time, in proportion to the increase of qualified voters: *Provided,* That the whole number shall never exceed thirty. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the Council and representatives, giving to each section of the territory representation in the ratio of its qualified voters, as nearly as may be. And the members of the Council and of the House of Representatives, shall reside in and be inhabitants of the district, or county, or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census, or an enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken, by such persons and in such

Proviso.

Election of members of Legislative Council.

Previous to first election, governor shall cause a census to be taken.

mode as the governor shall designate and appoint; and the persons so appointed, shall receive a reasonable compensation therefor; and the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election, and the returns thereof, as the governor shall appoint and direct; and he shall, at the same time, declare the number of members of the Council and House of Representatives, to which each of the counties or districts shall be entitled under this act; and the governor shall, by his proclamation, give at least sixty days' previous notice of such apportionment, and of the time, places and manner of holding such election. The persons having the highest number of legal votes in each of said Council districts for members of the Council, shall be declared by the governor to be duly elected to the Council; and the persons having the highest number of legal votes for the House of Representatives shall be declared by the governor to be duly elected members of said house: *Provided*, That, in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the Legislative Assembly, the governor shall order a new election; and the persons thus elected to the Legislative Assembly, shall meet at such place and on such day, within ninety days after such elections, as the governor shall appoint; but, thereafter, the time, place and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the Council and House of Representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the Legislative Assembly: *Provided*, That no session in any one year shall exceed the term of sixty days, except the first session, which shall not be prolonged beyond one hundred days.

Time, manner, and place of holding elections.

Proviso for new elections.

Time, &c., of elections.

Term of sessions limited.

SEC. 5. *And be it further enacted*, That every white male inhabitant, above the age of twenty-one years, who shall have been a resident of said territory at the time of the passage of this act, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the Legislative Assembly: *Provided*, That the right of suffrage and of holding office, shall be exercised only by citizens of the United States above the age of twenty-one years, and those above that age who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United States, and the provisions of this act: *And provided further*, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote in said territory, by reason of being on service therein, unless said territory is, and has been for the period of six months, his permanent domicil: *Provided further*, That no person belonging to the army or navy of the United States, shall ever be elected to, or hold any civil office or appointment in said territory.

Qualification of voters.

Proviso; right of suffrage and of holding office, to whom limited.

No person in the army or navy to vote, unless, &c.

No person in the army or navy eligible to any civil office.

Extent of legislative power.

This act not to be construed as giving power to charter a bank, borrow money, &c.

All laws, inconsistent with this act void.

Act of Legislature to embrace but one object.

SEC. 6. *And be it further enacted*, That the legislative power of the territory, shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents, be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly, shall be submitted to the Congress of the United States, and if disapproved, shall be null and of no effect: *Provided*, That nothing in this act shall be construed to give power to incorporate a bank, or any institution with banking powers, or to borrow money in the name of the territory, or to pledge the faith of the people of the same for any loan whatever, either directly or indirectly. No charter granting any privilege of making, issuing, or putting into circulation any notes or bills in the likeness of bank notes, or any bonds, scrip, drafts, bills of exchange or obligations, or granting any other banking powers or privileges, shall be passed by the Legislative Assembly; nor shall the establishment of any branch or agency of any such corporation, derived from other authority, be allowed in said territory; nor shall said Legislative Assembly authorize the issue of any obligation, scrip, or evidence of debt by said territory, in any mode or manner whatever, except certificates for services to said territory; and all such laws, or any law or laws, inconsistent with the provisions of this act, shall be utterly null and void; and all taxes shall be equal and uniform, and no distinction shall be made in the assessments between different kinds of property, but the assessments shall be according to the value thereof. To avoid improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title.

Certain officers to be appointed by the Legislature.

SEC. 7. *And be it further enacted*, That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected in such manner as shall be provided by the Legislative Assembly of the territory of Oregon.

No member of the Legislature can hold other office, &c., while in office or for a year after

SEC. 8. *And be it further enacted*, That no member of the Legislative Assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first Legislative Assembly; and no person holding a commission or appointment under the United States, shall be a member of the Legislative Assembly, or shall hold any office under the government of said territory.

Judicial power; how vested.

Supreme Court; how constituted, &c.

SEC. 9. *And be it further enacted*, That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually, and they shall hold their offices during the period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts, by one of the justices of the Supreme Court, at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively reside in the districts which shall be assigned to them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any case in which the title to land shall in any wise come in question, or where the debt or damages claimed, shall exceed one hundred dollars; and the said supreme and district courts respectively, shall possess Chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in Chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception and appeals, shall be allowed in all cases from the final decisions of said district courts to the Supreme Court, under such regulations as may be prescribed by law; but in no case removed to the Supreme Court, shall trial by jury be allowed in said court. The Supreme Court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner, and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed two thousand dollars, and in all cases where the constitution of the United States, or acts of Congress, or a treaty of the United States, is brought in question; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution of the United States, and the laws of said territory, as is vested in the circuit and district courts of the United States; writs of error and appeal, in all such cases shall be made to the Supreme Court of said territory, the same as in other cases. Writs of error and appeals from the final decisions of said supreme courts shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner as from the circuit courts of the United States, where the value of the property, or the amount in controversy, shall exceed two thousand dollars; and each of said district courts shall have and exercise the same jurisdiction, in all cases arising under the constitution and laws of the United States, as is vested in the circuit and district courts of the United States, and also of all cases arising under the laws of the said territory, and otherwise The said clerk shall receive, in all such cases, the same fees which the clerks of the district courts of the late Wisconsin territory received for similar services.

District court.

Justices of the peace

Each district court to appoint its clerk.

Writs of error, &c.

How clerk of Supreme Court appointed; term of office, &c.

Writs of error, &c., to Supreme Court of U. S.

Jurisdiction of district courts.

How writs of errors and appeals are to be taken.

District courts. Jurisdiction.

Clerk's fees.

Attorney, his term of office, &c.

His fees and salary.

Marshal; his term of office, duties, liabilities, &c.

Compensation for extra services.

SEC. 10. *And be it further enacted*, That there shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as were provided by law for the attorney of the United States for the late territory of Wisconsin. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and districts courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees, as were provided by law for the marshal of the District Court of the United States for the present [late] territory of Wisconsin; and shall, in addition, be paid two hundred dollars annually as a compensation for extra services.

Governor, secretary, chief justice, associate justices, attorney, and marshal to be appointed by the president.

Their oath of office, &c.

Salary of governor; of chief justice, associate justices and secretary

Salary and mileage of members of the Legislature

SEC. 11. *And be it further enacted*, That the governor, secretary, chief justice, and associate justices, attorney and marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed by the president of the United States. The governor and secretary, to be appointed as aforesaid, shall, before they act as such, respectively take an oath or affirmation, before the district judge, or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the Supreme Court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices; which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificates shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and associate justices, and all other civil officers in said territory, before they act as such, shall take a like oath or affirmation, before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified; which said oath or affirmation shall be certified and transmitted by the person taking the same, to the secretary, to be by him recorded as aforesaid; and afterwards, the like oath or affirmation shall be taken, certified and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of fifteen hundred dollars as governor, and fifteen hundred dollars as superintendent of Indian affairs. The chief justice and associate justices shall each receive an annual salary of two thousand dollars. The secretary shall receive an annual salary of fifteen hundred dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointment, at the treasury of the United States; but no such payment shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the Legislative Assembly shall be entitled to receive three dollars each per day during their attendance at the session thereof, and three dollars each for every twenty miles' travel in going to and returning from said sessions, estimated according to the nearest usually travelled route. And a chief clerk, one assistant clerk, a sergeant-at-arms, and door-keeper, may be chosen for each house; and the chief clerk shall receive five dollars per day, and the said other officers three dollars per day, during the session of the Legislative Assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the Legislature annually, unless, on an extraordinary occasion, the governor shall think proper to call the Legislature together. There shall be appropriated, annually, the sum of fifteen hundred dollars, to be expended by the governor to defray the contingent expenses of the territory, including the salary of a clerk of the executive department; and there shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States, to defray the expenses of the Legislative Assembly, the printing of the laws, and other incidental expenses; and the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall semi-annually account to the said secretary for the manner in which the aforesaid [sum] moneys shall have been expended; and no expenditure, to be paid out of money appropriated by Congress, shall be made by said Legislative Assembly for objects not specially authorized by the acts of Congress making the appropriations, nor beyond the sums thus appropriated for such objects.

Proviso as to sessions of the Legislature

Appropriations for contingent expenses

Appropriations under the control of the secretary of the treasury of U S

Restriction on appropriations.

SEC. 12. *And be it further enacted*, That the rivers and streams of water in said territory of Oregon in which salmon are found, or to which they resort, shall not be obstructed by dams or otherwise, unless such dams or obstructions are so constructed as to allow salmon to pass freely up and down such rivers and streams.

Salmon leaps shall not be obstructed.

SEC. 13. *And be it further enacted*, That the sum of ten thousand dollars be, and is hereby appropriated, to be expended under the direction of the president of the United States, in payment for the services and expenses of such persons as have been engaged by the provisional government of Oregon, in conveying communications to and from the United States, and the purchase of presents for such of the Indian tribes as the peace and quietude of the country requires.

Appropriation of messengers and expresses

And for presents to Indians

SEC. 14. *And be it further enacted*, That the inhabitants of said territory shall be entitled to enjoy all and singular, the rights, privileges and advantages granted and secured to the people of the territory of the United States northwest of the river Ohio, by the articles of compact contained in the ordinance for the government of said territory, on the thirteenth day of July, seventeen hundred and eighty-seven; and shall be subject to all the conditions, and restrictions, and prohibitions in said articles of compact imposed upon the people of said territory; and the existing laws now in force in the territory of Oregon, under the authority of the provisional government established by the people thereof, shall continue to be valid and operative therein, so far as the same be not

Ordinance of 1787 extended over Oregon.

Prior laws making grants of land, &c., void.

incompatible with the constitution of the United States, and the principles and provisions of this act; subject, nevertheless, to be altered, modified or repealed, by the Legislative Assembly of the said territory of Oregon; but all laws heretofore passed in said territory making grants of land, or otherwise affecting or incumbering the title to lands, shall be, and are hereby declared to be null and void; and the laws of the United States are hereby extended over, and declared to be in force in said territory, so far as the same, or any provision thereof, may be applicable.

Time of holding Legislative Assembly

Location of seat of government.

Appropriation of $5,000 for buildings, &c.

SEC. 15. *And be it further enacted*, That the Legislative Assembly of the territory of Oregon, shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Legislative Assembly shall proceed to locate and establish the seat of government for said territory, at such place as they may deem eligible; which place, however, shall thereafter be subject to be changed by said Legislative Assembly. And the sum of five thousand dollars, out of any money in the treasury not otherwise appropriated, is hereby appropriated and granted to said territory of Oregon, to be there applied by the governor, to the erection of suitable buildings at the seat of government.

Election of delegate to Congress.

His qualifications.

Privileges.

Term of office.

How, where, and when his election shall take place.

Who shall be elected.

Mileage of delegate.

SEC. 16. *And be it further enacted*, That a delegate to the House of Representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the votes qualified to elect members of the Legislative Assembly, who shall be entitled to the same rights and privileges as have been heretofore exercised and enjoyed by the delegates from the several other territories of the United States to the said House of Representatives; but the delegate first elected shall hold his seat only during the term of the Congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; of which, and the time, place and manner of holding such elections, he shall give at least sixty days' notice by proclamation; and at all subsequent elections, the times, places and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. The delegate from said territory shall not be entitled to receive more than twenty-five hundred dollars at any one session of Congress, as a compensation for his mileage, in going to and returning from the seat of government of the United States, any act of Congress to the contrary, notwithstanding.

All suits and proceedings, &c., in the courts of the provisional government of Oregon, to be transferred to the District Court.

SEC. 17. *And be it further enacted*, That all suits, process and proceedings, civil and criminal, at law and in Chancery, and all indictments and informations, which shall be pending and undetermined in the courts established by authority of the provisional government of Oregon, within the limits of said territory, when this act shall take effect, shall be transferred to be heard, tried, prosecuted and determined in the district courts hereby established, which may include the counties or districts where any such proceeding may be pending. All bonds, recognizances and obligations of every kind whatsoever, valid under the existing laws within the limits of said territory, shall be valid under this act; and all crimes and misdemeanors against the laws in force within said limits, may be prosecuted, tried and punished in the courts established by this act; and all penalties, forfeitures, actions and causes of actions, may be recovered under this act, in like manner as they would have been under the laws in force within the limits composing said territory at the time this act shall go into operation: *Provided*, That the laws, penalties, and forfeitures and punishments by this section required to be enforced by the courts provided for by this act, shall not be inconsistent with the constitution of the United States: *And further provided*, That no right of action whatever shall accrue against any person for any act done in pursuance of any law heretofore passed by the temporary government, and which may be declared contrary to the constitution of the United States.

Proviso

Justices of the peace, constables, sheriffs, &c., in office when this act takes effect, are continued until, &c.

SEC. 18. *And be it further enacted*, That all justices of the peace, constables, sheriffs and all other judicial and ministerial officers, who shall be in office within the limits of said territory when this act shall take effect, shall be, and they are hereby, authorized and required to continue to exercise and perform the duties of their respective offices as officers of the territory of Oregon, until they or others shall be duly elected or appointed, and qualified to fill their places in the manner herein directed, or until their offices shall be abolished.

$5,000 appropriated for library.

SEC. 19. *And be it further enacted*, That the sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, to be expended, by and under the direction of the said governor of the territory of Oregon, in the purchase of a library, to be kept at the seat of government for the use of the governor, Legislative Assembly, judges of the Supreme Court, secretary, marshal and attorney of said territory, and such other persons, and under such regulations as shall be prescribed by law.

Sections 16 and 36 in each township appropriated to schools.

SEC. 20. *And be it further enacted*, That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

Until otherwise provided for by law, the governor may define the judicial districts, assign them judges, &c. Legislature to alter, &c., districts.

SEC. 21. *And be it further enacted*, That, until otherwise provided for by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory, to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him, but the Legislative Assembly, at their first or any subsequent session, may organize, alter or modify such judicial districts, and assign the judges, and alter the time and places of holding the courts, as to them shall seem proper and convenient.

Security to be given by certain officers, for moneys entrusted with them for disbursement.

SEC. 22. *And be it further enacted*, That all officers to be appointed by the president, by and with the advice and consent of the Senate, for the territory of Oregon, who by virtue of the provisions of any law now existing, or which may be enacted during the present Congress, are required to give security for moneys that may be entrusted with them for disbursement, shall give such security at such time and place, and in such manner, as the secretary of the treasury may prescribe.

Collection district at Astoria.

SEC. 23. *And be it further enacted*, That all the ports, harbors, shores and waters of the main land of the territory aforesaid, shall constitute a collection district, to be called the district of Oregon; and a port of entry shall be established at Astoria, near the mouth of the Columbia river, and a collector of customs shall be appointed by the president, by and with the advice and consent of the Senate, to reside at such port of entry.

Collector of customs.

Ports of delivery: where to be located. Appointment. Surveyor: his residence.

SEC. 24. *And be it further enacted*, That the president of the United States be, and he is hereby, authorized to establish such ports of delivery in the district created by this act, not exceeding two in number, (one of which shall be located on *Puget's* sound,) as he may deem expedient, and may appoint, by and with the advice and consent of the Senate, surveyors to reside thereat.

Collector and surveyor; their compensation.

SEC. 25. *And be it further enacted*, That the collector of said district shall be allowed a compensation of one thousand dollars per annum, and the fees allowed by law; and the compensation of any surveyor, appointed in pursuance of this act, shall not exceed five hundred dollars per annum, including in said sum the fees allowed by law; and the amount collected by any of said surveyors, for fees in any one year, exceeding the sum of five hundred dollars, shall be accounted for and paid into the treasury of the United States.

Revenue laws extended over the territory.

SEC. 26. *And be it further enacted*, That the revenue laws of the United States be, and are hereby, extended over the territory of Oregon.

$15,000 appropriated for light-houses and buoys.

SEC. 27. *And be it further enacted*, That the sum of fifteen thousand dollars be, and the same is hereby, appropriated out of any moneys in the treasury not otherwise appropriated, to be expended under the direction of the secretary of the treasury, for the construction of light-houses at Cape Disappointment and New Dunginess; and for the construction and anchoring of the requisite number of buoys, to indicate the channels at the mouth of the Columbia river, and the approaches to the harbor of Astoria; the said buoys to be placed and anchored under the direction of such persons as the secretary of the treasury shall appoint.

APPROVED August 14, 1848.

# ACT OF CONGRESS

## CREATING THE OFFICE OF SURVEYOR-GENERAL OF THE PUBLIC LANDS IN OREGON, AND TO PROVIDE FOR THE SURVEY,

AND TO

## MAKE DONATIONS TO SETTLERS OF THE SAID PUBLIC LANDS.

Sept. 27th, 1850

Surveyor-general of Oregon: his authority and duties.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That a surveyor-general shall be appointed for the territory of Oregon, who shall have the same authority, perform the same duties respecting the public lands and private land claims in the territory of Oregon, as are vested in and required of the surveyor of lands in the United States northwest of the Ohio, except as hereinafter provided.

Salary and place of office.

Bond.

Appropriation for clerk hire.

SECTION 2. *And be it further enacted*, That the said surveyor-general shall establish his office at such place, within the said territory, as the president of the United States may, from time to time, direct; he shall be allowed an annual salary of two thousand five hundred dollars, to be paid quarter-yearly, and to commence at such time as he shall enter into bond, with competent security, for the faithful discharge of the duties of his office. There shall be, and hereby is, appropriated the sum of four thousand dollars, or as much threeof as is necessary, for clerk hire in his office; and the further sum of one thousand dollars per annum for office rent, fuel, books, stationery and other incidental expenses of his office, to be paid out of the appropriation for surveying the public lands.

Manner of making surveys.

Proviso

SEC. 3. *And be it further enacted*, That, if in the opinion of the secretary of the interior it be preferable, the surveys in said territory shall be made after what is known as the geodetic method, under such regulations, and upon such terms, as may be provided by the secretary of the interior, or other department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys, as Congress may, from time to time, authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said surveyor to cause a base line and meridian to be surveyed, marked and established, in the usual manner, at or near the mouth of the Willamette river; and he shall also cause to be surveyed, in townships and sections, in the usual manner, and in accordance with the laws of the United States which may be in force, the district of country lying between the summit of the Cascade mountains and the Pacific ocean, and south and north of the Columbia river: *Provided, how-*

*ever*, That none other than township lines shall be run, where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run; and that the whole cost of surveying shall not exceed the rate of eight dollars per mile, for every mile and part of mile actually surveyed and marked.

Grants of public lands to whom.

Half section to single man. Section to married man

How land goes to heirs, &c.; married men who have complied with this act.

Proviso.

Further proviso.

Ib.

Ib.

SEC. 4. *And be it further enacted*, That there shall be, and hereby is, granted to every white settler or occupant of the public lands, American half-breed Indians included, above the age of eighteen years, being a citizen of the United States, or having made a declaration, according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of December, eighteen hundred and fifty-one, now residing in said territory, or who shall become a resident thereof on or before the first day of December, eighteen hundred and fifty, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one-half section, or three hundred and twenty acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section, or six hundred and forty acres—one-half to himself, and the other half to his wife, to be held by her in her own right; and the surveyor-general shall designate the part enuring to the husband, and that to the wife, and enter the same on the records of his office; and in all cases where such married persons have complied with the provisions of this act, so as to entitle them to the grant as above provided, whether under the late provisional government of Oregon or since, and either shall have died before patent issues, the survivor and children or heirs of the deceased shall be entitled to the share or interest of the deceased, in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed according to the laws of Oregon; *Provided*, That no alien shall be entitled to a patent to land granted by this act, until he shall produce to the surveyor-general of Oregon, record evidence that his naturalization as a citizen of the United States has been completed; but if any alien, having made his declaration of an intention to become a citizen of the United States after the passage of this act, shall die before his naturalization shall be completed, the possessory right acquired by him under the provisions of this act, shall descend to his heirs at law, or pass to his devisees, to whom, as the case may be, the patent shall issue: *Provided further*, That in all cases provided for in this section, the donation shall embrace the land actually occupied and cultivated by the settler thereon: *Provided further*, That all future contract, by any person or persons entitled to the benefit of this act, for the sale of the land to which he or they may be entitled under this act, before he or they have received a patent therefor, shall be void: *Provided further, however*, That this section shall not be so construed as to allow those claiming rights under the treaty with Great Britain, relative to the Oregon territory, to claim both under this grant and the treaty, but merely to secure them the election, and confine them to a single grant of land.

Grants of land to white persons emigrating between Dec. 1, 1850, and Dec. 1, 1853.

Proviso.

SEC. 5. *And be it further enacted*, That to all white male citizens of the United States, or persons who shall have made a declaration of intention to become such, above the age of twenty-one years, emigrating to and settling in said territory between the first day of December, eighteen hundred and fifty, and the first day of December, eighteen hundred and fifty-three; and to all white male American citizens, not hereinbefore provided for, becoming one-and-twenty years of age in said territory, and settling there between the times last aforesaid, who shall, in other respects, comply with the foregoing section and the provisions of this law, there shall be and hereby is granted the quantity of one quarter section, or one hundred and sixty acres of land, if a single man; or if married, or if he shall become married within one year from the time of arriving in said territory, or within one year after becoming twenty-one years of age as aforesaid, then the quantity of one-half section, or three hundred and twenty acres—one-half to the husband and the other half to the wife in her own right, to be designated by the surveyor-general as aforesaid: *Provided always*, That no person shall ever receive a patent for more than one donation of land in said territory in his or her own right: *Provided*, That no mineral lands shall be located or granted under the provisions of this act.

Settler when to notify surveyor-general of location of his tract.

Surveyor-general to keep a book; his duties.

Proviso

Further proviso

SEC. 6. *And be it further enacted*, That within three months after the survey has been made, or where the survey has been made before the settlement commenced, then, within three months from the commencement of such settlement, each of said settlers shall notify the surveyor-general, to be appointed under this act, of the precise tract or tracts claimed by them respectively under this law, and in all cases it shall be in a compact form; and where it is practicable so to do, the land so claimed shall be taken as nearly as practicable by legal sub-divisions; but where that cannot be done, it shall be the duty of the said surveyor-general to survey and mark each claim, with the boundaries as claimed, at the request and expense of the claimant; the charge for the same in such case, not to exceed the price paid for surveying the public lands. The surveyor-general shall enter a description of such claims in a book to be kept by him for that purpose, and note, temporarily, on the township plats, the tract or tracts so designated, with the boundaries; and whenever a conflict of boundaries shall arise prior to issuing the patent, the same shall be determined by the surveyor-general: *Provided*, That after the first December next, all claims shall be bounded by lines running east and west, and north and south: *And provided further*, That after the survey is made, all claims shall be made in conformity to the same, and in compact form.

Claimants, when to prove to surveyor-general, that cultivation, &c., has been commenced.

SEC. 7. *And be it further enacted*, That within twelve months after the surveys have been made, or where the survey has been made before the settlement, then, within twelve months from the time the settlement was commenced, each person claiming a donation right under this act, shall prove to the satisfaction of the surveyor-general, or of such other officer as may be appointed by law for that purpose, that the settlement and cultivation required by

Patent, when granted.

this act had been commenced, specifying the time of the commencement; and at any time after the expiration of four years from the date of such settlement, whether made under the laws of the late provisional government or not, shall prove in like manner, by two disinterested witnesses, the fact of continued residence and cultivation required by the fourth section of this act; and upon such proof being made, the surveyor-general, or other officer appointed by law for that purpose, shall issue certificates, under such rules and regulations as may be prescribed by the commissioner of the general land office, setting forth the facts in the case, and specifying the land to which the parties are entitled. And the said surveyor-general shall return the proof so taken, to the office of the commissioner of the general land office, and if the said commissioner shall find no valid objection thereto, patents shall issue for the land, according to the certificates aforesaid, upon the surrender thereof.

Rights, when guaranteed his heirs.

Patent to issue.

SEC. 8. *And be it further enacted*, That upon the death of any settler before the expiration of the four years' continued possession required by this act, all the rights of the deceased under this act, shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

When claims upon sections 16 and 36 invalid.

SEC. 9. *And be it further enacted*, That no claim to a donation right, under the provisions of this act, upon sections sixteen or thirty-six, shall be valid or allowed, if the residence and cultivation upon which the same is founded, shall have commenced after the survey of the same; nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for governmental purposes, unless the residence or cultivation thereof shall have commenced previous to the selection or reservation of the same for such purposes.

Grants for a university.

SEC. 10. *And be it further enacted*, That there be, and hereby is, granted to the territory of Oregon, the quantity of two townships of land in said territory, west of the Cascade mountains, and to be selected in legal sub-divisions after the same has been surveyed, by the Legislative Assembly of said territory, in such manner as it may deem proper, one to be located north, and the other south of the Columbia river, to aid in the establishment of a university in the territory of Oregon, in such manner as the said Legislative Assembly may direct—the selection to be approved by the surveyor-general.

Further grant for same. Oregon city claim.

Proviso.

SEC. 11. *And be it further enacted*, That what is known as the "Oregon City Claim," excepting the Abernethy Island, which is hereby confirmed to the legal assigns of the Willamette Milling and Trading Companies, shall be set apart and be at the disposal, of the Legislative Assembly, the proceeds thereof to be applied, by said Legislative Assembly, to the establishment and endowment of a university, to be located at such place in the territory as the Legislative Assembly may designate: *Provided, however*, That all lots and parts of lots in said claim, sold or granted by doctor John McLaughlin, previous to the fourth of March, eighteen hundred and forty-nine, shall be confirmed to the purchaser or donee, or their assigns, to be certified to the commissioner of the general land office by the surveyor-general, and patents to issue on said certificates, as in other cases: *Provided, further*, That nothing in this act contained shall be so construed and executed as in any way to destroy or affect any rights to land in said territory, holden or claimed under the provisions of the treaty or treaties existing between this country and Great Britain.

Further proviso

Persons claiming land to make oath, land is for their own use, &c.

SEC. 12. *And be it further enacted*, That all persons claiming land under any provisions of this act, by virtue of settlement and cultivation commenced subsequent to the first of December, in the year eighteen hundred and fifty, shall first make affidavit before the surveyor-general, who is hereby authorized to administer all such oaths or affirmations, or before some other competent officer, that the land claimed by them is for their own use and cultivation; that they are not acting, directly or indirectly, as agent for, or in the employment of others, in making such claims; and that they have made no sale or transfer, or any arrangement or agreement, for any sale, transfer or alienation of the same, or by which the said land shall enure to the benefit of any other person. And all affidavits required by this act, shall be entered of record, by the surveyor-general, in a book to be kept by him for that purpose; and on proof, before a court of competent jurisdiction, that any of such oaths or affirmations are false or fraudulent, the persons making such false or fraudulent oaths, or affirmations, shall be subject to all the pains and penalties of perjury.

Punishment of perjury.

Judicial powers of surveyor-general.

SEC. 13. *And be it further enacted*, That all questions arising under this act, shall be adjudged by the surveyor-general as preliminary to a final decision according to law; and it shall be the duty of the surveyor-general, under the direction of the commissioner of the general land office, to cause proper tract books to be opened for the lands in Oregon, and to do and perform all other acts and things necessary and proper to carry out the provisions of this act.

Reservation of mineral and other lands.

SEC. 14. *And be it further enacted*, That no mineral lands, nor lands reserved for salines, shall be liable to any claim under and by virtue of the provisions of this act; and that such portions of the public lands as may be designated under the authority of the president of the United States, for forts, magazines, arsenals, dock-yards, and other needful public uses, shall be reserved and excepted from the operation of this act: *Provided*, That if it shall be deemed necessary, in the judgment of the president, to include in any such reservation, the improvements of any settler made previous to the passage of this act, it shall, in such case, be the duty of the secretary of war to cause the value of such improvements to be ascertained, and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

Proviso.

APPROVED *September* 27, 1850.

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### *AN ACT to amend an act entitled "an act to create the office of Surveyor-General of the public Lands in Oregon, and to provide for the Survey, and to make Donations to the Settlers of the said public Lands," approved the twenty-seventh of September, one thousand eight hundred and fifty.*

Settlers, in lieu of continued occupation, may, after two year's occupation, pay $1 25 per acre.

Rights of settler in certain cases guaranteed to heirs, &c.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That all persons who have located, or may hereafter locate lands in the territory of Oregon, in accordance with the provisions of an act entitled "An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands," approved Sept. twenty-seventh, eighteen hundred and fifty, and of which survey shall have been made or may hereafter be had, in lieu of the term of continued occupation after settlement, as provided by said act, shall be permitted, after occupation for two years of the land so claimed, to pay into the hands of the surveyor-general of said territory, at the rate of one dollar and twenty-five cents per acre for the lands so claimed, located and surveyed as aforesaid; and upon the death of any settler before the expiration of the two years' continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs-at-law of such settler, including the widow, where one is left, in equal parts; and proof of compliance with the conditions of this act, up to the time of the death of such settler, shall be sufficient to entitle them to the patent.

Surveyor-general, when to issue certificate of payment, copy of survey, &c.

Patent, how to issue.

SEC. 2. *And be it further enacted,* That upon the payment of money for lands as aforesaid to the said surveyor-general, he shall issue his certificate of such payment, together with an accurate copy of the survey of the land so located and purchased, to the purchaser thereof; and, upon the filing of which said certificate and copy of survey in the office of the commissioner of the general land office, a patent shall issue therefor as in other cases.

Surveyor-general to keep certain records, and make reports, &c.

SEC. 3. *And be it further enacted,* That it shall be the duty of the said surveyor-general to keep and preserve a record of all moneys so received, and to make out and transmit quarterly, to the commissioner of the general land office, an accurate report of the moneys so received by him as aforesaid.

Surveyor-general to give security for certain moneys.

Additional compensation to surveyor-general.

SEC. 4. *And be it further enacted,* That it shall be the duty of the said surveyor-general, immediately upon the taking effect of this act, to enter into security in the sum of fifty thousand dollars, conditioned for the safe-keeping of all moneys received by him as surveyor-general, according to law; *Provided, however,* That, in order to compensate the surveyor-general of said territory for the additional labors and responsibility imposed upon him by this act, in receiving, safe-keeping, paying over, and accounting for the moneys aforesaid, he shall receive two per centum on all such sums, which shall include the payment for clerk hire, together with all costs and expenses incidental to such special services in any one year: *Provided,* The salary and per centage of said surveyor-general, and for clerk hire, shall not exceed four thousand dollars for any one year.

SEC. 5. *And be it further enacted*, That the provisions of the act, to which this is an amendment, be, and the same are hereby extended and continued in force until the first day of December, eighteen hundred and fifty-five.

This act, how long to remain in force.

SEC. 6. *And be it further enacted*, That every person entitled to the benefit of the fourth section of the act of which this is amendatory, who was resident in said territory on or prior to the first of December, eighteen hundred and fifty, shall be and hereby is required to file with the surveyor-general of said territory, in advance of the time when the public surveys shall be extended over the particular land claimed by him, where those surveys shall not have been made previous to the date of this act, a notice in writing, setting forth his claim to the benefits of said section, and citing all required particulars in reference to such settlement claim ; and all persons failing to give such notice on or prior to the first of December, eighteen hundred and fifty-three, shall be thereafter debarred from ever receiving any benefit under said fourth section. And all persons who, on or prior to first December, eighteen hundred and fifty-three, shall have settled on surveyed lands in said territory, in virtue of the provisions of the fifth section of the act of which this is amendatory, who shall fail to give notice in writing of such settlement, specifying the particulars thereof to the surveyor-general of said territory, on or prior to the first of April, eighteen hundred and fifty-five, shall be thereafter debarred from ever receiving the benefits of said fifth section.

Persons entitled to the benefit of § 4 of this act, to file with surveyor-general certain notice.

Consequence of neglect.

SEC. 7. *And be it further enacted*, That from and after the first of April, eighteen hundred and fifty-five, all public lands within the limits of the townships surveyed, or to be surveyed, in said territory, west of the Cascade mountains, which shall not have been claimed under the provisions of the fourth and fifth sections of the act of which this is amendatory, or reserved for public uses by law, or order of the president, and excepting also mineral lands, shall be subject to public sale and private entry as other public lands of the United States; and, so soon as he shall deem expedient, the president of the United States shall, by and with the advice and consent of the Senate, appoint a receiver of public moneys for the territory of Oregon, west of the Cascade mountains, who shall give bond and security, in the penalty of fifty thousand dollars, for the faithful discharge of his official trust, and whose duties, under the laws in relation to the public lands of the United States in said territory, shall be the same as those of other like officers of the United States, and who shall be allowed not exceeding —— dollars per annum, for the safe-keeping and accounting for the public moneys by him received, including all charges for office rent and clerk hire; and, at such time as the president of the United States shall deem it expedient, he shall appoint, by and with the advice and consent of the Senate, a register of the land office for the territory of Oregon, west of the Cascade mountains, who shall enter into bond, with sufficient security, for the faithful discharge of his official duties, as other like officers, and whose duties and authority, under the direction of the secretary of the interior, shall be the same as those imposed by law on other like officers, consist-

Certain lands west of Cascade mountains subject to public sale.

When receiver to be appointed for territory west of Cascade mountains. His bond, duties, compensation, &c.

Register to be appointed His bond, duties, compensation, &c.

Surveyor-general to perform register's duties until, &c.

ently with the provisions of this act and of the act of which this is amendatory, and whose compensation shall be equal to that allowed to the receiver of public moneys to be appointed under this act; and, until such register shall have been appointed, and entered upon the discharge of his official duties, the surveyor-general of Oregon shall perform all the duties which shall appertain to such office.

Grants to certain widows.

Rights of deceased widow to vest in her heirs.

SEC. 8. *And be it further enacted*, That each widow now residing in Oregon territory, and such others as shall locate in said territory, whose husband, had he lived, would have been entitled to a claim under the provisions of the act to which this is an amendment, shall be entitled, under the provisions and requirements of said act, to the same quantity of land that she would have been but for the death of her husband; and that in case of the death of the widow prior to the expiration of the four years' continued possession required by said act, to which this is an amendment, all the rights of the deceased shall enure unto and be vested in the heirs-at-law of such widow.

Reservations for certain public buildings, &c.

Dockyards, etc., limited to 640 acres.

Proviso.

SEC. 9. *And be it further enacted*, That all reservations heretofore, as well as hereafter, made in pursuance of the fourteenth section of the act to which this is an amendment, shall, for magazines, arsenals, dock-yards, and other needful public uses, except for forts, be limited to an amount not exceeding twenty acres for each and every of said objects at any one point or place, and for forts to an amount not exceeding six hundred and forty acres at any one point or place: *Provided*, That if it shall be deemed necessary, in the judgment of the president, to include in any such reservation the improvement of any settler made previous to such reservation, it shall, in such case, be the duty of the secretary of war to cause the value of such improvements to be ascertained; and the amount so ascertained shall be paid to the party entitled thereto, out of any money not otherwise appropriated.

Duties of surveyor-general, how prescribed.

SEC. 10. *And be it further enacted*, That the said surveyor-general, in the discharge of his duties under this act, shall be subject to all the provisions of the act entitled "An act to provide for the better organization of the treasury, and for the collection, safe keeping, transfer and disbursement of the public revenue," approved August sixth, eighteen hundred and forty-six; and all acts and parts of acts in conflict with the provisions of this act, be, and the same are hereby, repealed.

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1850, ch. 76.

1853, ch. 69.

*AN ACT to amend the act approved September twenty-seven, eighteen hundred and fifty, to create the office of Surveyor-General of the Public Lands in Oregon, etc., and also the Act amendatory thereof, approved February nineteen* [fourteenth,] *eighteen hundred and fifty-three.*

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the donations hereafter to be surveyed in Oregon and Washington territories, claimed under any of the provisions of the act to create the office of surveyor-general of the public lands in Oregon, etc., approved September twenty-seven, eighteen hundred and fifty, shall in no case include a town site, or lands settled upon for purposes of business or trade, and not for agriculture; and all legal sub-divisions included in whole or in part in such town sites, or settled upon for purposes of business or trade, and not for agriculture, shall be subject to the operations of the act of May twenty-three, eighteen hundred and forty-four, "for the relief of citizens of towns upon lands of the United States, under certain circumstances," whether such settlements were made before or after the surveys: *Provided, however*, That the period of two years' occupancy required of settlers before they can purchase the lands claimed by them under the provisions of the first section of the act of February fourteen, eighteen hundred and fifty-three, above mentioned, shall be, and the same is hereby, reduced to one year.

Donations, hereafter surveyed, not to include town sites or lands settled.
1850, ch. 76.
1844, ch. 17
Can purchase after one year's occupancy
1853, ch. 69

SEC. 2. *And be it further enacted*, That the proviso to the fourth section of the act of twenty-seventh September, eighteen hundred and fifty, above mentioned, by which all contracts for the sale of lands claimed under that law, before the issue of the patents therefor, are declared void, shall be, and the same is hereby, repealed: *Provided*, That no sale shall be deemed valid, unless the vendor shall have resided four years upon the land.

Part of fourth section of the act, 1850, ch. 76, repealed.
Proviso

SEC. 3. *And be it further enacted*, That the pre-emption privilege granted by the act of fourth September, eighteen-hundred and forty-one, shall be, and the same is hereby extended to the lands in Oregon and Washington territories, whether surveyed or unsurveyed, not rightfully claimed, entered or reserved, under the provisions of this act, or the acts of which it is amendatory, nor excluded by the terms of the said act of eighteen hundred and forty-one, with the exception of unsurveyed lands as above mentioned; and all settlers on unsurveyed lands in said territories shall give notice to the surveyor-general, or other duly authorized officer, of the particular tract claimed under this section, within six months after the survey of such lands is made and returned. And all persons claiming donations under this act, or the acts of which it is amendatory, shall in like manner give notice to the surveyor-general, or other duly authorized officer, of the particular lands claimed as such donations, within thirty days after being requested to do so by such officer; and failing such notice in either case, the claimant or claimants shall forfeit all right and claim thereto: *Provided, however*, That the time limited by the sixth section of the act of eighteen hundred and fifty-three, in which claimants under the act of eighteen hundred and fifty are required to give notice of their claims, shall be, and the same is hereby extended to the first of December, eighteen hundred and fifty-five, except in cases where the surveyor-general shall request them so to do, as above provided.

Pre-emption act, Sept. 4, 1841, ch. 16, extended to Oregon and Washington territories.
1841, ch. 76.
Notice of claims, to whom and when to be given.
Proviso
1853, ch. 60
1850, ch. 76.

SEC. 4. *And be it further enacted*, That, in lieu of the two townships of land granted to the territory of Oregon by the tenth section of the act of eighteen hundred and fifty, for universities, there shall be reserved to each of the territories of Washington and Oregon two townships of land of thirty-six sections each, to be selected in

Grants to Washington and Oregon for university.
1850, ch. 76

legal sub-divisions, for university purposes, under the direction of the Legislatures of said territories respectively.

Land granted orphans, whose parents, if living, would be entitled

How set off

How vested in case of death.

SEC. 5. *And be it further enacted*, That in any case where orphans have been, or may be, left in either of the said territories, whose parents, or either of them, if living, would have been entitled to a donation under this act, or either of those of which it is amendatory, said orphans shall be entitled to a quarter-section of land on due proof being made to the satisfaction of the surveyor-general, subject to the decision of the secretary of the interior. Said land to be set off to them by the surveyor-general in good agricultural land, not reserved, or otherwise appropriated, under any law of Congress; and, in case of the death of either or any of said orphans, after their lands shall have been designated by the surveyor-general, the right or rights of the deceased shall vest in the survivor or survivors.

Act extended to Oregon and Washington territories.

Register and Receiver to be appoint'd, their duties, powers, and compensat'n

SEC. 6. *And be it further enacted*, That all the provisions of this act, and the acts of which it is amendatory, shall be extended to all the lands in Oregon and Washington territories; and, for the purpose of carrying said acts into effect in said territories, the president shall be, and he is, hereby authorized to appoint a register and receiver for each of said territories, whose powers, duties, obligations, and responsibilities, shall be the same as are now prescribed by law for other land officers and for the surveyor-general of Oregon, so far as they apply to such officers. They shall keep their offices at such place as the president shall, from time to time, direct; and their compensation shall be twenty-five hundred dollars each, per annum, and office rent; but they shall be entitled to no fees or other emoluments of any kind whatsoever, except the receiver's actual and necessary expenses in depositing; and, on satisfactory proof that either of said officers, or any other officer, has charged or received fees or other rewards not authorized by law, he shall be forthwith removed from office.

Washington territ'y made a surveying district. Surveyor-general, how appointed, his powers, duties, and fees.

SEC. 7. *And be it further enacted*, That the territory of Washington shall be erected into a separate surveying district, and the president of the United States is hereby authorized to appoint a surveyor-general for the same, who shall hold his office at such place as the president may direct, and the location thereof may be changed from time to time, if, in the judgment of the president, the public interest should require it; and the powers, duties, obligations, responsibilities and emoluments of the said surveyor-general shall be the same as are now prescribed by law for the surveyor-general of Oregon.

APPROVED *July* 17, 1854.

# ABSTRACT

## OF THE LAWS OF THE UNITED STATES IN RELATION TO THE NATURALIZATION OF ALIENS.(*a*)

Who may be admitted as citizens.

SEC. 1. Any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:

Form of declaration two years prior to admission; and before whom made.

SEC. 2. *First:* That he shall have declared, on oath or affirmation, before the Supreme, Superior, District or Circuit Court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, or before the clerk of either of such courts,(*b*) two(*c*) years at least before his admission, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.(*d*)

Certain persons exempted from preceding conditions.

SEC. 3. From this condition are exempted any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, 1798, and the fourteenth day of April, 1802, and who has continued to reside within the same (*e*)

Admission of minors who arrive in the U. S. when not over 18

SEC. 4. Any alien, being a free white person and a minor, under the age of twenty-one years, who shall have resided in the United States three years next preceding his arrival at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted to be a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration, required in the second section, three years previous to his admission: But such alien shall make the declaration required therein at the time of his or her admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for three years next preceding, it has been the *bona fide* intention of such alien to become a citizen of

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(*a*) 6 Cranch. 176; 2 Whea 259; 4 Peters, 393; 8 Cranch. 335; 7 Cranch. 420; 2 Galli. C. C. Rep 11; Peters' C C Rep 457.

(*b*) Act May 26th, 1824, sec. 3 Story, 1973.

(*c*) Ibid sec 4.

(*d*) Act April 14th, 1802. Story, 850

(*e*) Act March 26th, 1804, sec. 1. Story, 942.

the United States; and shall, in all other respects, comply with the laws in regard to naturalization.(*a*)

When widow and children of deceased alien deemed citizens.

SEC. 5. When any alien, who shall have complied with the condition specified in section second, and who shall have pursued the directions prescribed in the second section of the act of April 14, 1802,(*b*) may die before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.(*c*)

Oath upon admission.

SEC. 6. An alien shall, at the time of his application to be admitted, declare, on oath or affirmation, before some one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; which proceeding shall be recorded by the clerk of the court.(*d*)

Proof of character and residence, before admission, and by whom to be made.

SEC. 7. The court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the state or territory where such court is at the time held, one year, at least; and it shall further appear to their satisfaction that, during that time, he has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same. The oath of the applicant shall, in no case, be allowed to prove his residence.(*e*)

Alien to renounce hereditary title—record thereof; to be citizen of country at peace with United States.

SEC. 8. In case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility, in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien, who shall be a native citizen, denizen or subject of any country, state, or sovereign with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States.(*g*)

As to aliens residing in the United States in 1812.

SEC. 9. But persons resident within the United States or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had, before that day, made a declaration according to law, of their intention to become citizens of the United States; or who, by the existing laws of the United States, were, on that day, entitled to become citizens without making such declaration, may be admitted to become citizens

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(*a*) Act May 26th, 1824, sec. 1. Story, 1973.

(*b*) The second section of the act of April 14, 1802, required an alien, when he arrived in the United States, to have his name registered, &c., with the clerk of the proper court, &c. This section was repealed by act of May 24, 1828. Story, 850, 2145.

(*c*) Act March 26, 1804, sec. 2. Story, 942.

(*d*) Act 14th April, 1802, sec. 1. Story, 850.

(*e*) Act 14th April, 1802, sec. 1. Story, 850.

(*g*) Act 15th April, 1802, sec. 1.

thereof, notwithstanding they shall be alien enemies, at the times, and in the manner prescribed by the laws heretofore passed on that subject: *Provided*, That nothing herein contained shall be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy, at any time previous to the actual naturalization of such alien.(*a*)

As to aliens residing in the U. S between 1802 and 1812

SEC. 10. Any alien, being a free white person, who was residing within the limits, and under the jurisdiction of the United States, between the fourteenth day of April, one thousand eight hundred and two, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without having made any previous declaration of his intention to become a citizen: *Provided*, That whenever any person, without a certificate of such declaration of intention, shall make application to be admitted a citizen of the United States, it shall be proved, to the satisfaction of the court, that the applicant was residing within the limits, and under the jurisdiction of the United States, before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; or he shall not be so admitted: and the residence of the applicant within the limits, and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses: and such continued residence within the limits, and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.(*b*)

As to aliens residing in the U. S between 1798 and 1802, what proof of residence required, and how set forth in record to render admission valid

SEC. 11. Nothing in the foregoing section (ten) contained, shall be construed to exclude from admission to citizenship any free white person who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two; and who, having continued to reside therein without having made any declaration of intention before a court of record, as aforesaid, may be entitled to become a citizen of the United States, according to section three. Whenever any person, without a certificate of such declaration of intention, as aforesaid, shall make application to be admitted a citizen of the United States, it shall be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States, before the fourteenth day of April, one thousand eight hundred and two, and has continued to reside within the same; or he shall not be so admitted. And the residence of the applicant within the limits and under the jurisdiction of the United States,

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(*a*) Act of July 30, 1813. Story, 1354.

(*b*) Act May 24, 1828. Story 2145, and see Story 1354.

for at least five years immediately preceding the time of such application, shall be proved by the oath or affirmation of citizens of the United States; which citizens shall be named in the record as witnesses. And such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place or places where the applicant has resided for at least five years, as aforesaid, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant: otherwise, the same shall not entitle him to be considered and deemed a citizen of the United States.(*a*)

What children of aliens, etc., deemed citizens.

SEC. 12. The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of their parents being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States; and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States. The right of citizenship shall not descend to persons whose fathers have never resided within the United States: And no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the war of the revolution, shall be admitted a citizen, without the consent of the Legislature of the state in which such person was proscribed.(*b*) Children of persons naturalized before the fourteenth of April, 1802, under age at the time of their parents' naturalization, were, if dwelling in the United States on the fourteenth of April, 1802, to be considered as citizens of the United States.(*c*)

Proscribed persons not to be admitted.

As to aliens residing in the United States prior to 1795.

SEC. 13. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof, made to some one of the courts aforesaid, that he has resided two years at least within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath or affirmation, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and, moreover, on its appearing to the satisfaction of the court that, during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for ad-

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(*a*) Act 22d March, 1816, sec 2. Story, 1539.
(*b*) *Campbell* v. *Gordon*, 6 Cr. 176 —Act 14th April, 1802, sec 4. Story, 850.
(*c*) *Campbell* v. *Gordon*, al. 6 Cr. 176. Story, 850.

mission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making, in the court, an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceeding, required in this proviso to be performed in the court, shall be recorded by the clerk thereof.(*a*)

What state courts may admit aliens.

SEC. 14. Every court of record, in any individual state, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a District Court, within the meaning of the naturalization act: and every alien, who may have been naturalized in any such court, shall enjoy the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.(*b*)

Five years' residence required before admission of alien who arrives in United States after 1815.

SEC. 15. No person who shall arrive in the United States after February the seventeenth, 1815, shall be admitted to become a citizen of the United States, who shall not, for the continued term of five years next preceding his admission, have resided within the United States, without being, at any time during the said five years, out of the territory of the United States (*c*)

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(*a*) Act April 14th, 1802, sec. 1. Story, 850.
(*b*) Act April 14th, 1802, sec. 3.
(*c*) Act March 3d, 1813, sec. 12. Story, 1304.

# REVISED STATUTES

# OF THE

# TERRITORY OF OREGON.

## AN ACT

### TO RE-APPORTION THE MEMBERS OF THE COUNCIL AND HOUSE OF REPRESENTATIVES.

Members of Council.

Their apportionment.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the Council shall hereafter consist of nine members, who shall be apportioned among the different counties as follows: One to the county of Jackson; one to the counties of Coos, Douglas and Umpqua, jointly; one to the counties of Lane and Benton, jointly; one to the county of Linn; one to the county of Marion; one to the counties of Clackamas and Wasco, jointly; one to the counties of Washington and Columbia, jointly; one to the counties of Clatsop and Yamhill, jointly; and one to the counties of Polk and Tillamook, jointly.

Members of the House of Representatives: their apportionment.

SEC. 2. The House of Representatives shall hereafter consist of thirty members, to be apportioned among the different counties as follows:—Four to the county of Jackson; one to the county of Douglas; one to the county of Coos; one to the county of Umpqua; two to the county of Lane; two to the county of Benton; three to the county of Linn; three to the county of Marion; three to the county of Clackamas; one to the county of Wasco; three to the county of Washington; one to the county of Columbia; one to the county of Clatsop; two to the county of Yamhill; one to the county of Polk; and one to the counties of Polk and Tillamook, jointly.

*Passed January* 31*st*, 1854.

# CHAPTER I.

## AN ACT RELATING TO ELECTIONS, AND THE MODE OF SUPPLYING VACANCIES IN OFFICE.

TITLE I. *Of the Qualification of Voters.*
TITLE II. *Of General Elections.*
TITLE III. *Of Canvass by the Judges.*
TITLE IV. *Of the Canvass by the Clerk of the Board of County Commissioners.*
TITLE V. *Of the Manner of Contesting the Elections of County, Town, District and Precinct Officers.*

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## TITLE I.

### *Of the Qualification of Voters.*

SEC 1. Persons entitled to vote.
2 Persons not entitled to vote.

Those entitled to vote.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That all white male inhabitants over the age of twenty-one years, who shall have resided within this territory for six months next preceding an election, shall be entitled to vote at any election for delegate to Congress, and for territorial, county and precinct officers: *Provided,* That they shall be citizens of the United States, or shall have declared their intentions, on oath, to become such, and shall have resided six months in the territory, and fifteen days in the county where they offer to vote, next preceding the day of election.

Those not entitled to vote.

SEC. 2. No person under guardianship, *non compos mentis,* or insane, nor any person convicted of treason, felony or bribery, unless restored to civil rights, shall be permitted to vote at any election. Nor shall any officer or soldier of the United States army be permitted to vote at any election during the term of their enlistment, unless they were residents of the territory at the time of their enlistment.

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## TITLE II.

### *Of General Elections.*

SEC. 3. The time of holding elections, and of officers to be elected.
4 & 5. Judges and clerks of election; their appointment, and term of office.
6. The notice of election, &c.
7. The publication of such notice.
8. Oath and affirmation of the judges and clerks.
9. Oath, how administered.
10. Time of opening and closing polls.
11. Poll books.
12. Manner of voting.
13. Duty of officers, on receiving a ballot.
14. Place of voting.
15. Challenge, and oath of the person challenged, &c.
16. Penalty for false oath and illegal voting.

SEC 17. Ballot box
18. Ballot box to be examined before elections.
19. Adjournment of the polls; clerks to compare poll lists.
20. Poll list to be locked in the ballot box, &c.
21. Judge to keep the key of ballot box; box, how to be opened.
22. Duty of judge to challenge.
23. Judges, however, to fine, &c.

Elections, when and where held.

SEC. 3. A general election shall be held in the several election precincts in this territory, on the first Monday of June in each year, at which there shall be chosen so many of the following officers as are by law to be elected in such year; that is to say: A delegate to Congress, members of the territorial Council and House of Representatives, judges of probate, district attorneys, county superintendents, county commissioners, sheriffs, county treasurers, coroners, justices of the peace, county assessors, constables and all other county, precinct and district officers not herein enumerated or otherwise provided for.

Officers to be elected.

Appointm'nt of judges of election.

SEC. 4. It shall be the duty of the county commissioners, at their regular session in April preceding the general election, to appoint three capable and discreet persons, possessing the qualifications of electors, to act as judges of the election at each election precinct, and said commissioners shall also set off and establish election precincts or districts when it may be necessary, and the clerk of the said board of commissioners shall make out and deliver to the sheriff of the county, immediately after the appointment of the said judges, a notice thereof in writing, directed to the judges so appointed: and it shall be the duty of the said sheriff, within twenty days after the receipt of the said notices, to serve the same upon each of the said judges of the election. If in any precinct, any of such judges do not serve, the voters of said precinct may elect a judge or judges to fill the vacancy on the morning of the election.

Ib. clerks of election.

SEC. 5. The said judges shall choose two persons, having similar qualifications with themselves, to act as clerks of the election. The said judges shall be and continue judges of all elections of civil officers, to be held at their respective precincts, until other judges shall be appointed as hereinbefore directed; and the said clerks of election may continue to act as such during the pleasure of the judges of election; and the county commissioners shall, from time to time, fill all vacancies which may occur in the office of judges of election, at any election precinct within their respective counties.

Their term of office.

Notice of elections.

SEC. 6. The clerks of the several boards of county commissioners shall, at least forty days before any general election, and at least twenty days previous to any special election, make out and deliver to the sheriff of his county, or to a justice of the peace of any county attached for judicial purposes, three written notices thereof for each election precinct, said notices to be, as nearly as circumstances will admit, as follows:—

Form of notice.

Notice is hereby given, that on the first Monday, the —— day of June next, at the house of ———, in the town, district, or precinct of ———, in the county of ———, an election will be held for territorial, county, town, or district officers, (naming the offices to be filled, as the case may be,) which election will be held at nine o'clock in the morning, and will continue until six o'clock in the afternoon of the same day. Dated this —— day of —— A. D., (as the case may be.)

(Signed,) A. B.,
*Clerk of the Board of County Commissioners.*

Notice to be posted by sheriff. SEC. 7 The sheriff aforesaid, to whom such notices shall be delivered as aforesaid, shall put up in three of the most public places in each town or precinct, the notices referring to such town or precinct, at least twenty days previous to the time of holding any general election, and at last eight days previous to the time of holding any special election; and in cases where towns and precincts may not be set off by law as election precincts, said notices shall be posted as follows:—one at the house where the election is authorized to be held, and the others at two of the most public and suitable places in that vicinity or settlement.

Oath of judges and clerks. SEC. 8. Previous to votes being taken, the judges and clerks of the elections shall severally take an oath in the following form; to wit: I, A. B., do solemnly swear (or affirm, as the case may be) that I will perform the duties of judge of the election, (or clerk, as the case may be,) according to law and the best of my ability; that I will studiously endeavor to prevent fraud, deceit and abuse, in conducting the same.

Ib., how administered. SEC. 9. In case there shall be no judge, or justice of the peace, present at the opening of the election, or in case such judge or justice shall be appointed judge or clerk of the election, it shall be lawful for the judges of the election, and they are hereby empowered, to administer the oath to each other, and to the clerk of the election; and the person administering the oaths shall cause an entry thereof to be made and subscribed by him, and prefixed to the poll books.

Opening and closing polls. SEC. 10. At all elections to be held under this chapter, the polls shall be opened at the hour of nine o'clock in the forenoon, and continue open until six o'clock in the afternoon of the same day, at which time the polls shall be closed: *Provided*, that the judges of election, if they deem it necessary for the purpose of receiving the votes of all the electors wishing to vote, may postpone the closing of the polls until seven o'clock, P. M.; and upon opening the polls, one of the clerks, under the direction of the judges, shall make proclamation of the same; and thirty minutes before the closing of the polls, proclamation shall be made in like manner that the polls will be closed in half an hour; but the board may, in their discretion, adjourn the polls at twelve o'clock at noon for one hour, proclamation of the same being made. Proviso.

Poll books. SEC. 11. It shall be the duty of the clerks of the several boards of county commissioners, to furnish one of the judges of every election precinct in the county with two poll books, at least five days before the time of holding any election.

SEC. 12. Every elector shall, in full view, deliver to one of the judges of the election, a single ballot, or piece of paper, on which

Elector, how to deliver ballot.

shall be written or printed the names of the persons voted for, with a pertinent designation of the office which he or they may be intended to fill; said ballot may be open or folded, as the voter may choose.

Duty of judge on receiving ballot.

SEC. 13. The judge, to whom any ticket may be delivered, shall, upon the receipt thereof, pronounce, with an audible voice, the name of the elector; and if no objection be made to him, and the judges be satisfied that the elector is legally entitled to vote, he shall immediately put the ticket in the box, without inspecting the names thereon, if it be a folded ballot; and the clerks of the election shall enter the name of the elector and number, in the poll book.

Elector's name to be entered.

Where to vote

SEC. 14. It shall be lawful for any elector to vote for delegate to Congress, at any place of holding an election within this territory; for members of the Council and House of Representatives, at any place of holding an election in the district in which he may reside; for county officers, at any place of holding an election in the county in which he resides; but for town or precinct officers, he shall not vote out of the town or precinct in which he resides: *Provided*, That an elector qualified to vote for a part, and not all, of the officers to be chosen at any election, shall vote an open ticket, that the judges may determine the legality of such vote.

Challenge.

SEC. 15. If any person offering to vote shall be challenged as unqualified, by any judge or clerk of the election, or by any other person entitled to vote at the same poll, the judges shall declare to the person so challenged, the qualification of an elector; if such person shall then state himself duly qualified, and the challenge shall not be withdrawn, one of the judges shall then tender to him the following oath; "You do solemnly swear, (or affirm, as the case may be) that you are twenty-one years of age; that you are a citizen of the United States, (or that you have declared your intention to become a citizen, conformable to the laws of the United States and of this territory on the subject of naturalization;) and that you have resided six months in the territory, and fifteen days in the county, next preceding the election; and that you have not voted at this election;" and if any person so challenged shall refuse to take such oath so tendered, his vote shall be rejected: *Provided*, That in case any person wishes to vote for delegate only, the fifteen days' residence in the county need not be sworn to.

Oath.

Vote, when rejected.

SEC. 16. If any person so offering such vote shall take such oath, his vote shall be received, unless it shall be proven by evidence, satisfactory to a majority of the judges, that he does not possess the qualification of an elector, in which case a majority of said judges are authorized to reject such vote; and if any person shall take such oath, knowing it to be false, he shall be deemed guilty of wilful and corrupt perjury; and shall, on conviction, suffer such punishment as now is or hereafter shall be prescribed by law for persons guilty of perjury. And if any person shall vote at any election who is not a qualified voter, he shall forfeit and pay for the use of the county in which such election shall take place, a sum not exceeding fifty, nor less than twenty-five dollars, to be sued for and recovered in the name of the county commis-

False oath.

Unqualified voting

sioners, by a civil action, before any justice of the peace in such county.

Ballot box. SEC. 17. There shall be provided and kept by the judges of each election precinct, (at the expense of the county,) a suitable ballot-box, with a lock and key.

How constructed. SEC. 18. There shall be an opening through the lid of such box, of no larger size than shall be sufficient to admit a single folded ballot. Before opening the polls, the ballot-box shall be carefully examined by the judges of the election, that nothing may remain therein; it shall then be locked, and the key thereof delivered to one of the judges, to be designated by the board, and shall not be opened during the election, except in the manner and for the purposes hereinafter mentioned.

To be examined.

Adjournments, poll lists to be compared. SEC. 19. At each adjournment of the polls, the clerks shall, in the presence of the judges, compare their respective poll lists, compute and set down the number of votes, and correct all mistakes that may be discovered, according to the decision of the board, until such poll lists shall be made in all respects to correspond.

Poll list to be placed in ballot box. SEC. 20. The ballot box shall then be opened, and the poll lists placed therein; and such box shall then be locked, and a covering with a seal placed on the opening in the lid of such box, so as to entirely cover the same, and the key delivered to one of the judges and the box to another, to be designated by the board.

Key of ballot box, how kept; box, how opened. SEC. 21. The judge having the key shall keep it in his own possession, and deliver it again to the board at the next opening of the poll: and the person having the care of the box, shall carefully keep it without opening it or suffering it to be opened, or the seal thereof to be broken or removed; and shall publicly, in that condition, deliver it to the board of judges at the next opening of the polls, when the seal shall be broken, the box opened, the poll lists taken out, and the box again locked.

Judge to challenge. SEC. 22. It shall be the duty of each judge of the election, to challenge every person offering to vote, whom he shall know or suspect not to be qualified as an elector.

Power of judge SEC. 23. For the preservation of order, the judges are hereby authorized to enforce a fine not exceeding fifty dollars, on any person or persons who shall conduct in a disorderly or riotous manner at the polls, and shall persist in such conduct after having been warned of the consequences, and on refusal to pay the same, to commit him or them to the common jail of the county for any time not exceeding six days, or until the fine shall be paid; and the constables, sheriffs, deputy sheriffs and jailors, are hereby required to execute said order as though it had been issued by a magistrate in due form of law. If no constable, sheriff or deputy be present, the judges may appoint a special constable, or constables to execute their orders.

## TITLE III.

### *Of the Canvass of the Judges.*

SEC. 24. Canvass to be public.
25. How commenced; counting votes, &c.
26. When ballots exceed poll lists, excess of ballots to be destroyed.
27. Statement of result to be in writing.
28. Disposition of poll books, returns in unorganized counties.
29. Penalty for not delivering poll book to county clerk.

Canvass how conducted.

SEC. 24. As soon as the polls of the election shall be finally closed, the judges shall immediately proceed to canvass the vote given at such election, and the canvass shall be public, and continue without adjournment until completed.

Canvass.

SEC. 25. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree. The box shall then be opened, and the ballots contained therein taken out and counted by the judges, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots shall be found so folded together as to present the appearance of a single ballot, they shall be laid aside until the count of the ballot is completed; and if, on a comparison of the count with the poll lists, and the appearance of such ballots, a majority of the judges shall be of opinion that the ballots thus folded together were voted by one elector, they shall be destroyed.

Double ballots

Destruction of certain ballots.

When ballots exceed poll lists.

SEC. 26. If the ballots in the box shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, after being purged as above, and one of the judges shall publicly draw out, and destroy therefrom so many ballots unopened, as shall be equal to such excess.

Count votes.

SEC. 27. The ballot and poll lists agreeing, or being made to agree, the board shall then proceed to count and ascertain the number of votes cast, and the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed at full length—such entry to be made, as nearly as circumstances will admit, in the following form, to wit:

Certificate.

At an election held at the house of A. B., in the town, district or precinct of——, in the county of——, and territory of Oregon, on the—— day of——, A. D. ——, the following named persons received the number of votes annexed to their respective names, for the following described offices, to wit:

A. B. had —— votes for delegate to Congress;
C. D. had ——votes for member of the Legislative Council;
E. F. had——votes for member of the House of Representatives;
(and in like manner, for any other person voted for.)
Certified by us, G. H, J. K., L. M., judges of election.
Attest A. B., C. D., clerks of election.

Poll books, how disposed of.

SEC. 28. The judges of election shall then enclose and seal one of the poll books under covers, directed to the clerk of the board of county commissioners of the county in which such election was held; and the packet thus sealed shall be conveyed by one of the judges or clerks of election, to be determined by lot if they cannot otherwise agree, or by some other person to be agreed upon by the judges, and delivered to the said clerk of the board of county commissioners, at his office, within ten days from the close of the polls; and the other poll book together with the ballot-box, deposited with one of the judges of election, to be determined by lot, if not otherwise agreed upon; and the said poll book shall be subject to the inspection of any elector, at any time thereafter, who may wish to examine the same. The returns of elections in unorganized counties shall be made to the clerk of the county to which they are attached for judicial purposes.

Penalty for not delivering poll book.

SEC. 29. If any judge or clerk of election, after being deputed by the judges of election to carry the poll-book of such election to the clerk of the county, shall fail or neglect to deliver such poll-book to the said clerk within the time prescribed by law, safe with the seals unbroken, he shall, for every such offence, forfeit and pay the sum of five hundred dollars, for the use of the county, to be recovered by a civil action, in the name of the county commissioners in the District Court.

## TITLE IV.

### *Of the Canvass by the Clerk of the Board of Commissioners.*

SEC. 30. Clerk to open returns, &c.; new election; when; compensation of judges and clerks.
31. Lots, when to decide election of precinct officers.
32. Abstract of votes to be sent to secretary of the territory; when governor may order new election.
33. If returns are not received by secretary in 30 days.
34. Resignation; writ of election; appointment of sheriff *pro tem*
35. When several counties form one council, &c.; district.
36. Salaries of messengers and clerks.
37. Malfeasance of judges or clerks; penalty.
38. When term of office begins to run.
39. Persons having largest vote deemed elected.
40. Misspelling, &c, of candidates' names to be disregarded.

Clerk to open returns and make abstracts.

SEC. 30. On the tenth day after the close of any election, or sooner, if all the returns be received, the clerk of the board of county commissioners, taking to his assistance two justices of the peace of the county, shall proceed to open said returns and make abstracts of the votes; such abstract of votes for delegate to Congress shall be on one sheet; the abstract of the votes for members of the Legislative Assembly, shall be on one sheet; and the abstract of votes for county and precinct officers, shall be on another sheet; and it shall be the duty of the said clerk of county commissioners, immediately to make out a certificate of election to each of the persons having the highest number of votes for members of the Legislative Assembly, county and precinct officers respectively, and to deliver such certificate to the person entitled to it, on his making application to the clerk at his office; *Provided*, That when a tie shall exist between two or more persons for the Council or House of Representatives, the clerk of the board of commissioners shall give notice to the sheriff of the county, who shall immediately advertise another

New election, when.

election, giving at least ten days' notice. And it shall be the duty of the clerk of the board of commissioners of such county, on the receipt of the returns of any general or special election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of commissioners at their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury.

Clerk's certificate for judges pay, etc.

Lots, when drawn.

SEC. 31. If the requisite number of county or precinct officers shall not be elected by reason of two or more persons having an equal, and the highest number of votes for one and the same office, the clerk, whose duty it is to compare the polls, shall give notice to the several persons so having the highest and an equal number of votes, to attend at the office of the proper clerk, at a time to be appointed by said clerk, who shall then and there proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected; and the said clerk shall make and deliver to the person thus declared duly elected, a certificate of his election as hereinbefore provided.

Abstract to secretary of territory.

SEC. 32. The clerk of the board of county commissioners, immediately after making the abstract of the votes given in his county, shall make a copy of each of said abstracts, and transmit it by mail to the secretary of the territory at the seat of government, and it shall be the duty of the secretary of the territory, with the marshal of the territory or his deputy, in presence of the governor, to proceed, within thirty days after the election, and sooner if the returns be all received, to canvass the votes given for delegate to Congress; and the governor shall grant a certificate of election to the person having the highest number of votes, and shall also issue a proclamation, declaring the election of such person. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes, the governor shall, by proclamation, order a new election.

When governor shall order new election.

When returns not received in 30 days.

SEC. 33. If the returns of the election of any county in this territory shall not be received at the office of the secretary of the territory within thirty days after the election, the said secretary shall forthwith send a messenger to the board of commissioners of such county, whose duty it shall be to furnish the said messenger with a copy of such returns; and the said messenger shall be paid, out of the county treasury of the said county, the sum of twenty cents for each mile he shall necessarily travel in going to and returning from said county.

Resignation of officers.

SEC. 34. Any person who shall receive a certificate of his election as a member of the Council, or House of Representatives of the Legislative Assembly, coroner, or county commissioner, shall be at liberty to resign such office, though he may not have entered upon the execution of its duties, or taken the requisite oath of office; and when any vacancy shall happen in the office of member of the Council, or House of Representatives, by death, resignation, or otherwise, and a session of the Legislature is to take place before the next annual election, the governor shall issue a writ of election, directed

Writs of election.

to the sheriff of the county or district in which such vacancy shall happen, commanding him to notify the several judges in his county or district, to hold a special election to fill such vacancy or vacancies, at a time appointed by the governor.

Appointm'nt of sheriff pro tem.

If a vacancy happen in the office of sheriff, the county commissioners shall appoint some one to fill such vacancy until the next election; and when a vacancy shall happen in the office of delegate to Congress from this territory, it shall be the duty of the governor to issue his proclamation, appointing a day to hold a special election to fill such vacancy.

Joint certificates by clerks of 2 counties, when given.

SEC. 35. When two or more counties are united in one council or representative district, the clerk of the board of county commissioners of the county last established, shall, on the tenth day after the election, unless a previous time is agreed upon, attend at the office of the clerk of the board of th esenior county, and, in conjunction with him, shall canvass the votes according to law, and the certificate of election shall be signed by both clerks, and be delivered to the proper persons, at the office of the clerk of the senior county.

Salary of officers of election.

SEC. 36. There shall be allowed, out of the county treasury of each county, to the several judges and clerks of election, three dollars per diem, and to the person carrying the poll books from the place of election to the clerk's office, the sum of twenty cents per mile, for going and returning, to be paid out of the county treasury.

Official misconduct.

SEC. 37. If any judge or clerk of election, or any other person, in any manner concerned in conducting the election, shall corruptly violate any of the provisions of this chapter, he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars, to be recovered by a civil action, in the name of the county commissioners of the proper county.

Term of office.

SEC. 38. The term of office of all officers elected shall begin to run from the time of their election, unless some other express provision is made by law.

Person elected.

SEC. 39. In all elections, unless it is otherwise expressly provided, the person having the highest number of votes for any office shall be deemed to have been elected.

In counting votes, misspelling, etc., to be disregarded.

SEC. 40. In counting votes, the judges of election shall disregard misspelling, or abbreviations of the names of candidates for office, if it can be ascertained from such votes for whom they were intended.

## TITLE V.

TITLE 5

### *Of the Manner of Contesting the Election of County, Town, District and Precinct Officers.*

SEC. 41. Notice to be given.
42. Service and return of notice; trial, &c
43 When the contest is between claimants of township, &c., office.
44 Judge of probate has jurisdiction.
45. Witnesses, trial by court, appeal
46. How this chapter is to be construed.

Who may give notice.

SEC. 41. Any person wishing to contest the election of any person to any county, district, township, or precinct office, may give notice in writing to the person whose election he intends to contest, that his election will be contested, stating the cause of such contest briefly, within thirty days from the time said person shall claim to have been elected.

Notice, how served.

SEC. 42. Said notice shall be served in the same manner as a summons, issued out of the District Court, ten days before any hearing upon such contest, as herein provided, shall take place, and shall state the time and place that such hearing shall be had; upon the return of said notice, served to the clerk of the District Court of such county, he shall thereupon enter the same upon his issue docket as an appeal case, and the same shall be heard in its order by the court: *Provided*, That if the case cannot be determined by the District Court, in term time, within one month after the termination of such election, the judge of the District Court may hear and determine the same at chambers, as soon thereafter as may be practicable, and shall make all necessary orders for the trial of the case, and carrying his judgment into effect: *Provided*, That this section shall not apply to township or precinct officers.

Proviso

In case of township officers.

SEC. 43. In case of contest between any persons claiming to be elected to any township or precinct office, said notice shall be served in manner aforesaid, and shall be returned to the judge of probate of the county.

Jurisdiction of judge of probate.

SEC. 44. Upon the return of said notice to the said judge of probate, and on the day and at the place therein named, the said judge of probate shall hear and determine such contest, and make all necessary orders for the trial of the cause, and carrying his judgment into effect.

Trial, how conducted.

SEC. 45. Each party shall be entitled to subpœnas, and subpœnas *duces tecum*, as in ordinary cases at law, and the court shall hear and determine (without the intervention of jury) the same in such manner as shall carry into effect the expressed will of a majority of the legal voters as indicated by their votes for such office, not regarding technicalities or errors in spelling the name of any candidate for such office. And the clerk of said court or judge of probate shall issue a certificate to the person declared to be duly elected by said court, which shall be conclusive evidence of the right of said person to hold said office; *Provided*, That the judgment or decision of the District Court in term time, or a decision of a judge thereof in vacation, as the case may be, may be removed to the Supreme Court by writ of error, or in such other manner as is pro-

TITLE 5. Appeal. vided for removing causes from the district to the Supreme Court; *And provided further*, That appeals may be taken from the decision of a judge of probate to the District Court as in probate cases; in all which cases the party removing any such judgment or decision by writ of error or appeal, shall file in the proper court a bond to the opposite party, in such sum and with such sureties as shall be prescribed by a judge thereof, conditioned for the payment of all costs that may be properly taxed against him.

This chapter, how construed. SEC. 46. This chapter shall not be construed so as to impair in any way the right of any person to contest any election in the manner otherwise provided by statute.

## *AN ACT to Substitute the viva voce for the Ballot Mode of Voting.*

SEC. 1. Elector, how to give his vote.
2. Oath or affirmation of clerk.
3. Name of rejected voter to be registered.
4. Within what time judges may erase an illegal vote.
5. Election, how to be conducted.
6. Canvass, when to commence.
7. Certain sections of "act" relating to elections and supplying vacancies repealed.
8. Act when to take effect.

Viva voce vote. SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the votes given at all general and special elections hereafter held in this territory, shall be given *viva voce*, or by ticket handed to the judges, and shall, in both cases, be cried in an audible voice, by the officer attending, and noted by the clerks in the presence and hearing of the voters.

Oath of clerks. SEC. 2. The clerks of election, before entering upon the duties of their appointment or office, shall take an oath or affirmation, to be administered by one of the persons appointed or elected as judges of the election, that they will faithfully record the names of all the voters, and distinctly carry out, in lines and columns, the name of the person or persons for whom each voter votes.

Registering rejected voter. SEC. 3. When any person, who shall offer himself as a voter, shall be excluded from voting by the judges, they shall cause his name to be entered on the poll book as a rejected voter, and shall also take down the names of the persons for whom such person wishes to vote.

Erasing illegal vote. SEC. 4. Before the final count of the votes given, and the same are officially certified by the judges of election, if the said judges are satisfied, upon the oath or affirmation of any qualified elector, that any person who has not been previously challenged and sworn, has voted illegally, they may erase such vote from the poll books.

Elections, how conducted. SEC. 5. All general or special elections hereafter held in this territory, shall be conducted in conformity to the act entitled, "An act relating to elections, and the mode of supplying vacancies in office," passed January 29, 1854, except as herein provided.

Canvass how commenced. SEC. 6. The canvass shall commence by a comparison of the poll lists from the commencement, and a correction of any mistake that may be found therein, until they shall be found or made to agree.

SEC. 7. Sections 12, 13, 17, 18, 24, 25, 26, and so much of section 27 of the act entitled "An act relating to elections, and the mode of supplying vacancies in office," passed January 29, 1854, as is inconsistent with this act, are, and the same is hereby repealed. Part of prior act. repealed.

SEC. 8. This act shall take effect, and be in force, from and after its passage. When to take effect.

# CHAPTER II.

## OF RESIGNATIONS, VACANCIES, REMOVALS, AND SUPPLYING VACANCIES.

TITLE I. *Of Resignations.*
TITLE II. *Of Vacancies and Removals.*
TITLE III. *Of Supplying Vacancies.*

## TITLE I.

### *Of Resignations.*

SEC. 1. Resignations shall be made as follows:

1. By the treasurer of the territory, auditor of the territory, and by all officers elected by the Legislature, to the governor. Resignation.
2. By all officers who hold their offices by election, to the officer or officers respectively authorized by law to order a special election to fill such offices respectively;
3. By all other officers holding their offices by appointment, to the body, board or officer that appointed them.

## TITLE II.

### *Of Vacancies.*

SEC. 2. Office, when vacant.
3. When the governor shall declare an office vacant.

SEC. 2. Every office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:— Vacancies.

1. The death of the incumbent;
2. His resignation;
3. His removal;
4. His ceasing to be an inhabitant of the district, county, town or village for which he shall have been elected or appointed, or within which the duties of his office are required to be discharged;
5. His conviction of any infamous crime, or of any offence involving a violation of his oath;
6. His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit such oath or bond within the time prescribed by law;
7. The decision of a competent tribunal, declaring void his election or appointment.

TITLE 3.

Governor when to declare office vacant.

SEC. 3. The governor shall also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

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## TITLE III.

### *Of Supplying Vacancies.*

SEC. 4. When, and what vacant offices governor may fill by appointment.
5. What offices county commissioners may fill.
6. Officers appointed; how to qualify; their term of office.
7. This act, when to take effect.

During recess of Legislature.

SEC. 4. Whenever a vacancy shall occur during the recess of the Legislature, in any office which the Legislature are authorized to fill by election, the governor, unless it is otherwise specially provided, may appoint some suitable person to perform the duties of such office.

County commissioners may fill certain vacancies.

SEC. 5. When at any time there shall be, in either of the offices of judge of probate, county clerk, sheriff, coroner or any county or precinct office, no officer duly authorized to execute the duties thereof, some suitable person may be appointed by the county commissioners to perform the duties of either of said offices.

How to qualify: term of office.

SEC. 6. Every such person so appointed, in pursuance of either of the two last preceding sections shall, before proceeding to execute the duties assigned them, qualify in the same manner as required by law of the officers in whose place he shall be appointed; and he shall continue to exercise and perform the powers and duties of the office to which he shall be appointed, until such vacancy shall be regularly supplied as provided by law.

Act, when to take effect, &c.

SEC. 7. This act shall take effect, and be in force from and after its passage. *Passed January 11th, 1854.*

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## *AN ACT to provide for holding the Supreme and District Courts.*

SEC 1. Time and place of holding Supreme Court.
2. Counties composing first, second and third judicial districts; residence of associate judges.
3. Time and place of holding District Court.
4. Trial of criminal offences in District Court.
5. What causes, &c, judge of District Court at chambers may hear and determine.
6. When judges may exchange districts.
7. County of Tilamook and Yamhill, Coss and Umpqua attached for judicial purposes.
8. This act, when to take effect.

Time and places of holding Supreme Court.

SECTION 1. *Be it enacted by the Legislative Assembly of the territory of Oregon,* That a supreme court shall be held in Portland on the second Monday of June, and in Salem on the second Monday of December in each year.

First district

SEC. 2. The counties of Marion, Linn, Lane, Benton and Polk, shall compose the first judicial district, and George H. Williams, chief justice, is assigned to reside therein.

Second district.

The counties of Clatsop, Washington, Clackamas and Yamhill, shall compose the second judicial district, and Cyrus Olney, one of the associate justices, is assigned to reside therein.

Third district.

The counties of Umpqua, Douglas and Jackson, shall compose the third judicial district, and Obediah B. McFadden, one of the the associate justices, is assigned to reside therein.

Time for holding District Court in the different counties

SEC. 3. District courts shall be held in the several counties, on the following Mondays, to wit: in Clatsop, the fourth in February and August; in Clackamas, the first in March and September; in Yamhill, the third in March and September; in Washington, the fourth in April and September; in Lane, the first in May and October; in Benton, the second in May and October; in Linn, the third in May and October; in Polk, the fourth in May and October; in Marion, the first in April and November; in Douglas, the third in May and November; in Umpqua, the fourth in May and November.; in Jackson, the first in February, May, August and November.

Trial of criminal offences

SEC. 4. When any person shall be detained in prison or custody charged with a criminal offence, the judge of the district, and in case of vacancy, absence or other inability, then any other judge, may appoint and hold a district court for the indictment and trial of such prisoner, at which term all persons in actual custody shall be tried, who shall have received from the judge ten days' notice of the time of holding such court for their trial, and any other business may be done by consent of parties.

Powers of judges at chambers.

SEC. 5. The judges at chambers may hear and decide all causes and matters at law and in equity arising or pending in their respective districts, which do not require the intervention of a jury, taking care that the parties have due notice of the time and place of hearing; and at the request of both parties, may hold jury trials, and tax the expense as costs of suit.

Judges may exchange districts.

SEC. 6. The judges may exchange districts, and hold courts for each other at pleasure, and when a vacancy shall happen, or a judge shall be sick, absent or otherwise unable to serve, it shall be the duty of the other judges to supply his place, so far as the same can be done without omitting any regular court in their own districts.

Tillamook & Yamhill, Coos and Umpqua to be attached.

SEC. 7. The county of Tillamook shall be attached to the county of Yamhill for judicial purposes, and the county of Coos shall be tached to Umpqua for judicial purposes.

Act to take effect.

SEC. 8. This act to take effect from and after its passage.

*Passed December 22d,* 1853.

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## *AN ACT supplemental to an act entitled, "an act to provide for holding the Supreme and District Courts.*

SEC. 1. When term of Supreme Court to be held at Jacksonville; proviso
2. This act, when to take effect.

Holding of Supreme Court at Jacksonville.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be held a term of the Supreme Court at

Jacksonville, in Jackson county, on the second Monday of July of each year; *Provided*, That if the clerk of the Supreme Court shall, within ten days next preceding the said second Monday of July, notify the judges of the Supreme Court that there are no writs of error pending for trial in said court, then it shall not be necessary for said judges to meet and hold a court at such term.

Act to take effect. SEC. 2. This act to take effect and be in force from and after its passage.

*Passed January 29th*, 1854.

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## *AN ACT to amend the act to provide for holding the Supreme and District Courts.*

SEC. 1. Supreme Court; when and where to be held.
2. Counties composing the three judicial districts; judges residing therein.
3. District Court; when and where to be held.
4. Trial; and grand jurors in Multnomah, how summoned; defendant served on second day of term; when to answer; witnesses when to be summoned.
5. "Part of an act" to provide for holding supreme and districts courts, repealed.
6. Act when to take effect.

Terms of Supreme Court SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the Supreme Court shall be held at the seat of government, on the first Monday in December, and at Portland, in the county of Multnomah, on the third Monday in June, in each year.

Judicial districts and judges. SEC. 2. The counties of Clackamas, Marion, Linn, Lane, Benton and Polk, shall compose the first judicial district, and Geo. H. Williams, chief justice, is assigned to reside therein. The counties of Clatsop, Columbia, Washington, Multnomah, Yamhill and Wasco, shall compose the second judicial district, and Cyrus Olney, one of the associate justices, is assigned to reside therein. The counties of Umpqua, Douglas, Coos and Jackson, shall compose the third judicial district, and M. P. Deady, one of the associate justices, is assigned to reside therein.

Terms of District Court. SEC. 3. District courts shall be held in the several counties on the following Mondays:—In the first district, Clackamas, the first in March and third in September; Polk, the fourth in April and October; Benton, the first in May and October; Lane, the second in May and October; Linn, the third in May and October; Marion, the fourth in May and first in November. In the second district, Clatsop, the third in March and August; Columbia, the fourth in March and August; Washington, the first in April and September; Yamhill, the second in April and September; Multnomah, the third in January and April; and the fourth in July and October; Wasco, the second in July. In the third district, Jackson, the first in May, August and October; Douglas, the third in May and October; Umpqua, the fourth in May and October; Coos, the fourth in July.

Jurors for Multnomah. SEC. 4. In the county of Multnomah, only twelve trial jurors shall be summoned at each term, and grand jurors shall be summoned only at the April and October terms; and no term shall be held in January, eighteen hundred and fifty-five. A defendant in said county, who shall be served with process before or on the second day of the term, shall be required to answer, and the issue shall be made up and the cause disposed of at that term, unless the issue is one of fact, and the court is satisfied that time beyond the term is necessary for the procuring of evidence; and in no case, except in admiralty, shall it be necessary to summon witnesses in said county until an issue of fact is formed. Proceedings therein.

SEC. 5. So much of the act to which this is an amendment as conflicts with this act, together with all of an act supplemental to an act entitled, "An act to provide for holding the supreme and district courts," be, and the same is hereby repealed. Prior act partly repealed.

SEC. 6. This act to take effect and be in force from and after its passage. Act to take effect.

*Passed January 26th*, 1855.

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*AN ACT supplemental to an act to amend the act to provide for holding the Supreme and District Courts.*

SEC. 1. Tilamook and Polk joined for judicial purposes.
2. Act, when to take effect.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the county of Tilamook shall be, and the same is hereby attached to the county of Polk for judicial purposes, and all acts and parts of acts inconsistent with the provisions of this act, are hereby repealed. Tilamook & Polk.

SEC. 2. This act shall take effect and be in force from and after its passage. Act to take effect.

*Passed January 31st*, 1855.

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## *AN ACT* TO REGULATE PROCEEDINGS IN ACTIONS AT LAW IN THE SUPREME AND DISTRICT COURTS.

## CHAPTER I.

### CIVIL ACTIONS.

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| TITLE I. | *Of their Form* |
| TITLE II. | *Of the Place of Trial; Actions at Law.* |
| TITLE III. | *Of the Manner of Commencing Actions at Law.* |
| TITLE IV. | *Of the Pleadings.* |
| TITLE V. | *Of the Complaint.* |
| TITLE VI. | *Of the Demurrer.* |
| TITLE VII. | *Of the Answer.* |
| TITLE VIII. | *Of the Reply.* |
| TITLE IX. | *General Rules of Pleadings.* |
| TITLE X. | *Of Mistakes in Pleadings and Amendments.* |
| TITLE XI. | *Of Arrest and Bail.* |
| TITLE XII. | *Of the Claim and Delivery of.* |
| TITLE XIII. | *Of Attachment.* |

## TITLE I.

### *Of the Form of Actions at Law, and the Parties thereto.*

SEC. 1. Distinction between forms of civil actions abolished.
2. Parties to actions, how designated.
3. Actions, how commenced.
4. Assignment of thing in action not to prejudice defence.
5. Executor or trustee may sue without the person beneficially interested.
6. When a married woman is a party, her husband to be joined, except, &c.
7. Infant to appear by guardian.
8. Guardian, how appointed.
9. Father may sue for seduction of daughter.
10. When unmarried females may prosecute for their own seduction.
11. Plaintiff may sue in one action the different parties to commercial paper.
12. Action not to abate by death, marriage, or other disability, &c.; proceedings in such case.
13. Court when to decide controversy, or order other parties to be brought in.

Form of actions at law abolished. 4 How. 427.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the distinction between the forms of actions at law heretofore existing is abolished; and there shall be in this territory hereafter, but one form of action at law for the enforcement or protection of private rights, except as otherwise expressly provided by statute.

Parties, how designated.

SEC. 2. In such action the party complaining shall be known as the plaintiff, and the adverse party as the defendant.

Action in name of party in interest 5 How. 161.

SEC. 3. Every action shall be prosecuted in the name of the real party in interest, except as otherwise provided in section five.

Assignment of thing in action not to prejudice a defence, 9 Cow. 10 Paige, 369; 1 Sanf. 28.

SEC. 4. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence existing at the time of, or before notice of the assignment; but this section shall not apply to a negotiable promissory note or bill of exchange transferred in good faith, and upon good consideration, before due.

Executor, etc., or trustee may sue. 4 Hill, 186.

SEC. 5. An executor or administrator, a trustee of an express trust, or a person expressly authorized by statute, may sue without joining with him the person for whose benefit the action is prosecuted. A person with whom, or in whose name a contract is made for the benefit of another, is a trustee of an express trust within the meaning of this section.

Husband, when to be joined.

SEC. 6. When a married woman is a party, her husband shall be joined with her, except that:

1. When the action concerns her separate property, she may sue or be sued alone.

4 Pr. R. 336; 2 Sanf. 715.

2. When the action is between herself and her husband, she may sue or be sued alone.

6 Pr. R. 53.

But when her husband cannot be joined with her, as herein provided, and she is an infant under twenty-one years of age, she shall prosecute or defend by her next friend.

Infant to appear by guardian, 11 Wen. 164; 12 Wen. 191; 3 Hill, 407; 3 Sanf. 385.

SEC. 7. When an infant is a party, he shall appear by guardian, who may be appointed by the court in which the action is brought, or by a judge thereof.

SEC. 8. The guardian shall be appointed as follows:

2 Paige, 874.

1. When the infant is plaintiff, upon the application of the infant, if he be of the age of fourteen years; or if under that age, upon the application of a relation or friend of the infant.

2. When the infant is defendant, upon an application of the infant, if he be of the age of fourteen years, and apply within twenty days after the service of the summons; if he be under the age of fourteen, or neglect so to apply, then upon the application of any other party to the action, or of a relation or friend of the infant.

Prosecution for the seduction of daughter or ward.

SEC. 9. A father, or in case of his death or desertion of his family, the mother, may prosecute as plaintiff for the seduction of a daughter, and the guardian for the seduction of a ward, though the daughter or ward be not living with, or in the service of the plaintiff at the time of the seduction or afterwards, and there be no loss of service.

When female may prosecute for her seduction.

SEC. 10. An unmarried female, over twenty-one years of age, may prosecute as plaintiff in an action for her own seduction, and recover therein such damages as may be assessed in her favor; but the prosecution of an action to judgment by the father, mother, or guardian, as prescribed in the preceding section, shall be a bar to an action by such unmarried female.

Persons severally liable on same bill of exchange may be joined. 5 How. 5.

SEC. 11. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

Action, when not to abate.

Proceedings in case of death.

SEC. 12. No action shall abate by the death, marriage or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death, marriage, or other disability of a party, the court may, on motion, allow the action to be continued by or against his representatives or successor in interest.

Court may decide controversy or order parties brought in. 5 How 99, 142

SEC. 13. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court shall order them to be brought in.

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## TITLE II.

### *Of the Place of Trial; Actions at Law.*

SEC 14 Certain actions to be tried where the subject or some part is situated
15. Other actions, where the cause or some part thereof arose.
16. Other actions according to defendant's residence
17. When a change of venue may be had, proceedings of applicant, &c.
18. Application for change of venue; applicant not entitled to a second change
19 When judge to transmit order of change, &c, to clerk.
20. Transcript of record to be sent by clerk of court where cause is pending, to the clerk of court where cause is to be tried.
21. Applicant to pay costs
22. When order for change of venue may be cancelled.
23 Cause to be docketed, on filing of transcript, &c., in clerk's office.

SEC. 14. Actions for the following causes shall be tried in the county in which the subject of the action, or some part thereof, is

Certain actions to be tried where subject is situated.

situated, subject to the power of the court to change the place of trial, in the cases provided by statute:

1. For the recovery of real property or of an estate or interest therein, or for the determination in any form, of such right or interest, and for injuries to real property;

2. For the partition of real property;

3. For the foreclosure of a mortgage of real property;

4. For the recovery of any personal property distrained for any cause.

Actions where cause arose.

SEC. 15. Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose, subject to the like power of the court to change the place of trial in the cases provided by statute:

1. For the recovery of a penalty or forfeiture imposed by statute; except that when it is imposed for an offence committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream, and opposite to the place where the offence was committed:

18 Wen 85, 266.

2. Against a public officer, or person specially appointed to execute his duties, for an act done by him in virtue of his office; or against a person who, by his command, or in his aid, shall do anything touching the duties of such officer.

Actions according to defendant's residence.

SEC. 16. In all other cases, the action shall be tried in the county in which the defendants or either of them reside, or may be found, at the commencement of the action; or if none of the parties reside in this territory, the same may be tried in any county which the plaintiff may designate in his complaint; subject, however, to the power of the court to change the place of trial, as provided by statute.

Change of venue. 4 Hill 62, n.

SEC. 17. A change of venue, or the place of trial, may be had on the application of either of the parties in the following cases:

1. When the county in which the action is pending shall be a party thereto or interested therein:

2. When the judge shall be directly interested in the action, or connected by blood or affinity with any person so interested, nearer than in the fourth degree;

3. When the party applying for such change shall make and file an affidavit, stating that the judge or the inhabitants of the county are so prejudiced against him that he cannot expect an impartial trial, and also that the application for the change of venue is not made for the purpose of delay.

Application for change of venue, &c. 1 Denio, 660.

SEC. 18. An application for the change of venue may be made, either to the court in term time, or to a judge thereof in vacation, and the change shall be to the most convenient county in which there shall be no exception of the character of those above enumerated. But neither party shall be entitled to more than one change of venue, except for causes not in existence when the first change may have been taken.

Order of change Affidavit to be sent to clerk.

SEC. 19. If the change of venue be ordered by the judge in vacation, he shall immediately transmit to the clerk of the court where the cause is pending, the affidavit, if any, and the order for the change, who shall file the same in his office.

Duty of clerk.

SEC. 20. In such cases, as well as where the order shall be made in open court, the clerk shall forthwith transmit to the clerk of the proper court, a transcript of the record and proceedings in such cause, with all the original papers filed therein, having first made out and filed in his own office authenticated copies of all such original papers.

Applicant to pay costs.

SEC. 21. The costs of such change of venue shall be paid by the applicant therefor, and not taxed as a part of the costs of the case, and the clerk may require payment of such costs before the transcript and papers shall be transmitted as aforesaid.

When order of venue may be annulled.

SEC. 22. If such transcript of the record and proceedings be not transmitted to the clerk of the proper court within twenty days after the order for the change of venue shall be filed, (unless a longer time be allowed by the judge,) such order may be annulled by the court or judge who made the same, and, in such case, no other change of venue shall be allowed to such applicant.

Change of venue when consummated.

SEC. 23. Upon filing such transcript and papers in the office of the clerk of the court to which the same were certified, the cause shall be docketed, and the same proceedings had as though it had originated in that court.

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## TITLE III.

### *Of the Manner of Commencing Actions at Law.*

SEC. 24. Actions how commenced.
25 Summons when issued.
26. Summons, requisites of.
27. Notice to be inserted in summons in certain actions
28. Service and return of summons.
29. Summons and complaint how served.
30. Publication when defendant cannot be found.
31 & 32. Publication how made, defendant's rights in such cases.
33. When the clerk may issue a second summons.
34. Proceedings where there are several defendants, and part only are served.
35. Service of summons, &c., how proved
36. When jurisdiction of action acquired.

How commenced.

SEC. 24. Actions at law in the several district courts of this territory, shall be commenced by the filing of a complaint with the clerk of the court, and the issuing of a summons thereon.

Summons, when issued, &c.

SEC. 25. The clerk shall indorse on the complaint, the day, month and year that the same shall be filed; and at any time thereafter, the plaintiff may have a summons issued, which shall be directed to the defendant, and shall be signed by the clerk, and issued under the seal of the court, and shall be made returnable on the first day of the next term of court.

Summons; its requisites

SEC. 26. The summons shall require the defendant to appear and answer the complaint, or that judgment by default will be taken against him.

1. If he be served within the county in which the action is

brought, ten days before the term of the court; or if in any other county, thirty days before the court, he shall appear and answer the complaint on the return day of the summons.

2. If he be served less than ten days, within the county in which the action is brought, or less than thirty days in any other county, he shall appear and answer the complaint on the first day of the term next after the return day of the summons.

Notice to be inserted.

SEC. 27. There shall also be inserted in the summons a notice, in substance as follows:

4 How. 94.

1. In an action arising on contract for the recovery of money or damages only, that the plaintiff will take judgment for a sum specified therein, if the defendant fail to answer the complaint.

2. In other actions, that if the defendant fail to answer the complaint, the plaintiff will apply to the court for the relief demanded therein.

Service and return of summons.

SEC. 28. The summons shall be served by the sheriff of the county where the defendant is found, or by his deputy, or by a person specially appointed by him, or by a person appointed by the judge of the court in which the action is brought. The summons shall be returned to the office of the clerk from which it issued, with the certificate of the sheriff or his deputy, or the affidavit of the person appointed, of its service, and of the service of a copy of the complaint. When served out of the county in which the action is brought, the summons may be returned by mail, and the postage taxed with the costs of suit.

Summons & complaint, how served.

SEC. 29. The summons shall be served by delivering a copy thereof, together with a copy of the complaint prepared by the plaintiff, his agent or attorney, as follows:

5 How. 185

1. If the action be against a corporation, to the president or other head of the corporation, secretary, cashier, or managing agent thereof;

2. If against any county in this territory, to one of the board of commissioners of such county, or to the clerk of the commissioners;

3. If against a minor under the age of fourteen years, to such minor personally, and also to his father, mother or guardian; or if there be none within this territory, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed;

8 Paige, 199; 5 Paige, 489; 19 Wen 649; 4 Denio, 162.

4. If against a person judicially declared to be of unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian and to the defendant personally.

5. In all other cases, to the defendant personally, or, if he be not found, to some white person of the family, above the age of fourteen years, at the dwelling-house or usual place of abode of the defendant.

Publication when defendant cannot be found. 8 How. 416; 4 How. 151, 5 How. 8.

SEC. 30. When service of the summons cannot be made as prescribed in the last preceding section, and the defendant, after due diligence, cannot be found within the territory, and when that fact appears by affidavit, to the satisfaction of the court or judge thereof, and it in like manner appears that a cause of action exists against the defendant, or that he is a proper party to an action relating to real property in this territory, such court or judge may grant an order that the service be made by publication of a summons in either of the following cases:

1. When the defendant is a foreign corporation, and has property within the territory, or the cause of action arose therein;
2. When the defendant, being a resident of this territory, has departed therefrom with intent to defraud his creditors, or to avoid the service of a summons, or shall keep himself concealed therein with the like intent;
3. When the defendant is not a resident of the territory, but has property therein, and the action arises on contract, and the court has jurisdiction of the subject of the action;
4. When the action is for divorce, in the cases prescribed by law.

Publication, how made.

SEC. 31. The order shall direct the publication to be made in a newspaper published in the county where the action is brought, and if there be no newspaper published in the county, then in a newspaper to be designated as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks; or in case the defendant be absent from, or residing out of this territory, not less than once a week for three months. In case of publication, the court or judge shall also direct a copy of the summons and complaint to be forthwith deposited in the post office, directed to the defendant at his place of residence, unless it shall appear that such residence is not known to the party making the application. When publication is ordered, personal service of a copy of the summons and complaint, out of the territory, shall be equivalent to publication and deposit in the post office. In either case, the service of the summons shall be deemed complete at the expiration of the time prescribed in the order for publication.

Defendant's rights in such cases.

SEC. 32. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action; and, except in an action for divorce, the defendant against whom publication is ordered, or his representatives, may, in like manner, upon good cause shown, be allowed to defend after judgment and within one year after the rendition of such judgment, on such terms as may be just; and if the defence be successful, and the judgment or any part thereof have been collected or otherwise enforced, such restitution may thereupon be compelled as the court shall direct.

When clerk to issue second, &c., summons.

SEC. 33. Whenever it shall appear by the return of the sheriff, his deputy, or the person appointed to serve a summons, that he has not served it upon the defendants as prescribed in the twenty-ninth section, the clerk shall, at the request of the plaintiff, issue another summons, and so on until service be had; or the plaintiff may proceed by publication in the manner before stated, at his election.

SEC. 34. When the action is against two or more defendants, and

TITLE 4. Proceedings where there are several defendants, and part only served. the summons is served on one or more, but not all of them, the plaintiff may proceed as follows:

1. If the action be against defendants jointly indebted upon a contract, he may proceed against the defendants served, unless the court otherwise direct; and if he recover judgment, it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendant served, and, if they are subject to arrest, against the persons of the defendants served; or

2. If the action be against the defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

Proof of service. SEC. 35. Proof of the service of the summons and complaint shall be as follows:

1. If served by the sheriff or his deputy, the certificate of such sheriff or deputy; or

2. If by any other person, his affiadavit thereof; or

3. In case of publication, the affidavit of the printer or his foreman, or his principal clerk, showing the same; and an affidavit of a deposit of a copy of the summons and complaint in the post office, if the same shall have been deposited; or

4. The written admission of the defendant. In case of service, otherwise than by publication, the certificate, affidavit or admission must state the time and place of service.

3 Hill, 362. When jurisdiction of action acquired. SEC. 36. From the time of the service of the summons and complaint in an action at law, the court shall be deemed to have acquired jurisdiction, and to have control of all the subsequent proceedings. A voluntary appearance of the defendant shall be equivalent to personal service of the summons upon him.

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## TITLE IV.

### *Of the Pleadings in Actions of Law.*

SEC. 37. Forms of pleading inconsistent with this act abolished.
38. What pleadings are allowed.

Forms of pleading inconsistent with this act abolished. 7 Barb. 80; 8 Barb. 103, 300. SEC. 37. All the forms of pleading heretofore existing in actions at law, inconsistent with the provisions of this act, are abolished; and hereafter the forms of pleading, and the rules by which the sufficiency of the pleadings is to be determined, shall be those prescribed by statute.

Pleadings; names of. SEC. 38. The only pleadings on the part of the plaintiff shall be:

1. The complaint;
2. The demurrer; or
3. The reply.

And on part of the defendant:

1. The demurrer; or
2. The answer.

## TITLE V.

### *The Complaint.*

SEC. 39. First pleading to be complaint
40 Complaint, what to contain.

SEC. 39. The first pleading on the part of the plaintiff, shall be the complaint.

First pleading to be complaint.

SEC. 40. The complaint shall contain:

1. The title of the cause, specifying the name of the court, and the name of the county in which the action is brought, and the names of the parties to the action, plaintiff and defendant.

2. A plain and concise statement of the facts constituting the cause of action, without unnecessary repetition.

3. A demand of the relief which the plaintiff claims. If the recovery of money, or damages be demanded, the amount thereof shall be stated.

Complaint, what to contain.
4 Coms. 258
2 Coms. 182; 7 Barb. 204; 8 Barb 217, 570; 3 Sanf. 695, 736.

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## TITLE VI.

### *The Demurrer.*

SEC. 41 When defendant may demur
42. Demurrer must specify ground of objection to complaint.
43. How to proceed if complaint be amended
44 Objection, when taken by answer.
45. Objection, when deemed waived.

SEC. 41. The defendant may demur to the complaint within the time required in the summons to answer, when it appears upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action; or
2. That the plaintiff has not legal capacity to sue; or
3. That there is another action pending between the same parties for the same cause; or
4. That there is a defect of parties, plaintiff or defendant; or
5. That several causes of action have been improperly united; or
6. That the complaint does not state facts sufficient to constitute a cause of action.

When defendant may demur 8 How 177.
5 Sanf. 330; 1 Seld. 357, 7 How 4; 7 Barb 204.

SEC. 42. The demurrer shall distinctly specify the grounds of objection to the complaint; unless it does so it may be disregarded. It may be taken to the whole complaint, or to any of the alleged causes of action stated therein.

Demurrer must specify grounds of objection to complaint. 7 Barb 204; 1 Seld. 357.

SEC. 43. If the complaint be amended, a copy thereof shall be served on the defendant or his attorney of record, and the defendant shall answer the same within such time as may be prescribed by the court, and if he omit to do so, the plaintiff may proceed to obtain judgment as in other cases of failure to answer.

How to proceed if complaint be amended.

SEC. 44. When any of the matters enumerated in section forty-one do not appear upon the face of the complaint, the objection may be taken by answer.

Objection, when taken by answer

SEC. 45. If no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting

Objection, when deemed waived.

TITLE 7, 8. 6 Barb. 564; 7 Barb. 581.

only the objection to the jurisdiction of the court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

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## TITLE VII.

### *The Answer.*

SEC. 46 Answer, what to contain.
47. May set forth as many grounds of defence as exist.
48. Demurrer as to some causes of action, and action as to others.
49. Sham defences to be stricken out.

Answer, what to contain. 8 Paige, 210; 8 Barb. 189; Ib 250, 8 Sanf. 788; 8 How 193; 14 Barb. 533.

SEC. 46. The answer of the defendant shall contain:

1. A specific denial of each material allegation of the complaint controverted by the defendant, according to his knowledge, information or belief, or of any knowledge or information thereof sufficient to form a belief.

2. A plain and concise statement of any new matter constituting a defence or set-off, without unnecessary repetition.

Different defences. 7 Barb. 84.

SEC. 47. The defendant may set forth by answer as many defences as he may have. They shall each be separately stated, and refer to the causes of action which they are intended to answer, in any manner by which they may be intelligibly distinguished.

Demurrer to some causes of action and answer as to others.

SEC. 48. The defendant may demur to one or more of several causes of actions stated in the complaint, and answer the residue.

Sham defences to be stricken out. 1 Hill, 672, 4 How. 155, 5 Sanf. 660; 3 Sanf. 732.

SEC. 49. Sham and irrelevant answers and defences may be stricken out on motion, and upon such terms as the court may, in its discretion, impose.

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## TITLE VIII.

### *Of the Reply.*

SEC. 50. Reply, when put in, what to contain.
51. When defendant may move for judgment on answer.
52. Demurrer to reply.

Reply, what to contain. 6 Barb 144; 8 Barb 124; 8 How. 9.

SEC. 50. When the answer contains new matter constituting a defence or set-off, the plaintiff may, within one day or such further time as the court may allow, reply to such new matter, denying specifically each allegation controverted by him according to his knowledge, information or belief, or any knowledge or information thereof sufficient to form a belief, and he may allege, in a plain and concise manner, without unnecessary repetition, any new matter, not inconsistent with the complaint, constituting a defence to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof; and the plaintiff may demur to one or more of several defences or set-offs in the answer, and reply to the residue.

When defendant may move for judgment on answer.

SEC. 51. If the answer contain a statement of new matter constituting a defence, and the plaintiff fails to reply or demur thereto within the time prescribed, the defendant may move in court for such judgment as he shall be entitled to upon such statement, and if the case require it, a writ of inquiry of damages may be issued.

Demurrer to reply.

SEC. 52. If a reply of the plaintiff to any defence set up by the answer of the defendant be insufficient, the defendant may demur thereto, and shall state the grounds thereof

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# TITLE IX.

## *General Rules of Pleading.*

SEC 53 No pleading but complaint, answer, reply and demurrers.
54. Verification of pleadings.
55. How to state an account in pleadings.
56 Pleadings to be construed liberally
57. Irrelevant and redundant matter to be stricken out
58. Judgments, how to be pleaded.
59. Conditions precedent, how to be pleaded.
60 Private statutes, how to be pleaded.
61. Libel and slander, how stated in complaint
62 Answer in such cases.
63. Answer in actions to recover property distrained.
64. When several causes of action may be united in same complaint.
65 Allegation not denied, when to be deemed true
66. Nature of a material allegation.

Pleadings.

SEC. 53. Every pleading shall be subscribed by the party or his attorney, and, except a demurrer, shall also be verified by affidavit, as set forth in the next section.

Verification of pleadings.

2 Sanf. 647.

SEC. 54. The verification shall be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and as to those matters that he believes it to be true. The affidavit shall be made by the party, or if there be several parties united in interest, and pleading together, by one of such parties if he be within the county in which the action is brought, and capable of making the affidavit, unless the action or defence be founded upon a written instrument for the payment of money only, and such instrument be in the possession of the agent or attorney, or if all the material allegations of the pleading be within the personal knowledge of the agent or attorney, in which case the affidavit may also be made by such agent or attorney. If the party pleading shall not be within the county in which the action is brought, such pleading may be verified by the party, his agent or attorney, or by any person having a knowledge of the facts, and when the affidavit shall be made by any other person than the party, he shall set forth in it his knowledge, or the grounds of his belief on the subject, and the reason why it is not made by the party. When a corporation is a party, the verification may be made by any officer thereof, and when the territory, or any officer thereof in its behalf, is a party, the verification may be made by any person acquainted with the facts. The verification may be omitted, when an admission of the truth of the allegations might subject the party to prosecution for felony. And no pleading shall be used in a criminal prosecution against the party, as proof of a fact admitted or alleged in such pleading.

Account; how stated.

SEC. 55. It shall not be necessary for a party to set forth in a pleading, a copy of the instrument of writing, or the items of an account therein alleged; but, unless he file a verified copy thereof with such pleading, and serve the same on the adverse party, he shall, within ten days after a demand thereof in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true; or be precluded from giving evidence thereof. The court, or a judge thereof, may order a further account when the one delivered is defective, and the court may, in all cases, order a bill of particulars of the claim of either party to be furnished.

Pleadings, how construed.

SEC. 56. In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed, with a view of substantial justice between the parties.

Irrelevant & redundant matter stricken out. 5 How. 192; Sanf. 660.

SEC. 57. If irrelevant or redundant matter be inserted in a pleading, it may be stricken out on motion of any person aggrieved thereby; and when the allegations of a pleading are so indefinite or uncertain that the precise nature of the charge or defence is not apparent, the court may require the pleading to be made definite and certain by amendment.

Pleading of judgments.

SEC. 58. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but such judgment or determination may be stated to have been duly given or made. If such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts conferring jurisdiction.

Of conditions precedent. 5 How. 107.

SEC. 59. In pleading the performance of conditions precedent in a contract, it shall not be necessary to state the facts showing such performance, but it may be stated, generally, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading shall be bound to establish, on the trial, the facts showing such performance. In an action or defence founded upon an instrument for the payment of money only, it shall be sufficient for the party to give a copy of the instrument, and to state that there is due to him thereon from the adverse party a specific sum, which he claims.

Private statutes.

SEC. 60. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title and the day of its passage, and the court shall thereupon take judicial notice thereof.

Statement of libelous matter. 5 How. 171.

SEC. 61. In an action for libel or slander, it shall not be necessary to state in the complaint any extrinsic facts, for the purpose of showing the application to the plaintiff of the defamatory matter out of which the cause of action arose; but it shall be sufficient to state generally, that the same was published, or spoken concerning the plaintiff; and if such allegation be controverted, the plaintiff shall be bound to establish on trial, that it was so published or spoken.

Answer thereto.

SEC. 62. In the actions mentioned in the last section, the defendant may, in his answer, allege both the truth of the matter charged as defamatory, and any mitigating circumstances, to reduce the amount of damages; and whether he prove the justification or not, he may give in evidence the mitigating circumstances.

Answer of defendant in actions to recover property distrained.

SEC. 63. In an action to recover the possession of property distrained doing damage, an answer that the defendant, or person by whose command he acted, was lawfully possessed of the real property upon which the distress was made, and that the property distrained was at the time doing damage thereon, shall be good, without setting forth the title to such real property.

Joinder of causes of action.

SEC. 64. The plaintiff may unite several causes of action in the same complaint, when they all arise out of:

1. Contract, express or implied; or,
2. Injuries, with or without force, to the person; or,
3. Injuries, with or without force, to property; or,
4. Injuries to character; or,
5. Claims to recover real property, with or without damages for withholding thereof, and the rents and profits of the same; or,
6. Claims to recover personal property, with or without damage for the withholding thereof; or,
7. Claims against a trustee, by virtue of a contract, or by operation of law.

But the causes of action so united, must all belong to one only of these classes, and must affect all the parties to the action, and not require different places of trial, and must be separately stated.

Allegation not denied, deemed true.

SEC. 65. Every material allegation of the complaint, not specifically controverted by the answer, and every material allegation of new matter in the answer, not specifically controverted by the reply, shall, for the purposes of the action, be taken as true; but the allegation of new matter in a reply shall not, in any respect, conclude the defendant, who may, on the trial, countervail it by proofs, either in direct denial, or by way of avoidance.

Material allegation.

SEC. 66. A material allegation in a pleading, is one essential to the claim or defence, and which could not be stricken from the pleading without leaving it insufficient.

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## TITLE X.

### *Mistakes in Pleadings and Amendments.*

SEC. 67. Material variances, how provided for.
68. Immaterial variances, how provided for.
69. What to be deemed a material variance.
70. Amendments of course.
71. When a party may plead over, after decision on demurrer.
72. Amendments by the court.
73. Amendments after demurrer.
74. Suing a party by a fictitious name, when allowed.
75. No error or defect to be regarded, unless it affects substantial rights.
76. Supplemental complaint, answer or reply.

Material variances, how provided for. 7 Barb. 18, 2 Sanf. 421, 719

SEC. 67. No variance between the allegation in a pleading and the proof shall be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defence upon the merits. Whenever it shall be alleged that a party has been so misled, that fact shall be proved to the satisfaction of the court, and in what respect he has been misled; and thereupon the court may order the pleading to be amended upon such terms as shall be just.

Immaterial variances, how provided for. 6 Barb. 308.

SEC. 68. When the variance is not material, as provided in the last section, the court may direct the fact to be found according to the evidence, or may order an immediate amendment, without costs.

What to be deemed a variance.

SEC. 69. When, however, the allegation of the cause of action or defence to which the proof is directed is unproved, not in some particular or particulars only, but in its entire scope and meaning, it shall not be deemed a case of variance within the two last sections, but a failure of proof.

Amendments of course.

SEC. 70. Any pleading may be once amended by the party of course, without costs and without prejudice to the proceedings already had, at any time before the period for answering it shall expire; in such case, a copy of the amended pleading shall be served on the adverse party.

When party may plead over.

SEC. 71. After the decision upon a demurrer, if it be overruled, and it appears that such demurrer was interposed in good faith, the court may, in its discretion, allow the party to plead over upon such terms as may be proper. If the demurrer be sustained, either party may amend any pleading demurred to, upon such terms as may be just, and he shall serve a copy of the same, as amended, on the adverse party, within such time as may be prescribed by the court.

Amendments by the court.

SEC. 72. The court may, before or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, when the amendment does not change substantially the claim or defence, by conforming the pleading or proceeding to the facts proved.

Amendment after demurrer.

SEC. 73. The court may likewise, in its discretion, and upon such terms as may be just, allow an answer or reply to be made, or other act to be done after the time limited by this act, or by an order enlarge such time; and may also, in its discretion, and upon such terms as may be just, at any time within one year after notice thereof, relieve a party from a judgment, order, or other proceeding taken against him through his mistake, inadvertence, surprise, or excusable neglect.

Suing a party by a fictitious name, when allowed.

SEC. 74. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name; and when his true name shall be discovered, the pleading or proceeding may be amended accordingly.

Error in pleading, when to be disregarded. 4 Barb. 248.

SEC. 75. The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect.

Supplemental complaint, answer or reply. 5 How. 420; 4 Barb. 541.

SEC. 76. The plaintiff and defendant respectively, may be allowed, on motion, to make a supplemental complaint, answer, or reply, alleging facts material to the case, occurring after the former complaint, answer, or reply.

## TITLE XI.

TITLE 11

### *Provisional Remedy by Arrest and Bail.*

SEC. 77. Arrest on civil process.
78. When defendant may be arrested in civil action.
79. Order of arrest, by whom made.
80 Affidavits to obtain order.
81. Security by plaintiff before order of arrest.
82. Order, when made, and its form.
83. Affidavit and order to be delivered to sheriff, and copy to defendants.
84. Arrest, how made.
85 Defendant to be discharged on bail or deposit.
86 Bail, how given.
87 & 88. Surrender of defendant.
89. Bail, how proceeded against.
90. Bail, how exonerated.
91. Sheriff, when to file order of arrest and undertaking. Plaintiff must except to undertaking within ten days.
92. Notice of justification. New undertaking, if other bail.
93. Qualifications of bail.
94 & 95. Justification and allowance of bail.
96. Deposit of money with sheriff.
97. Payment of money by sheriff into court.
98. Substituting bail for deposit.
99. Money deposited, how applied, or disposed of.
100 Sheriff, when liable as bail; and his discharge from liability.
101. Proceedings on judgment against sheriff.
102. Bail liable to sheriff.
103. Fees of sheriff for keeping prisoner; and liability of plaintiff therefor.
104. Prisoner may be discharged on plaintiff neglecting, after demand, to pay sheriff's fees.
105. Motion to vacate order of arrest, or reduce bail; and affidavits on motion.
106. Order of arrest when vacated; bail when reduced.

Arrest on civil process.

SEC. 77. No person shall be arrested in an action at law, except as prescribed by this act; but this provision shall not apply to proceedings for contempt.

When defendant may be arrested. 5 Barb. 509.

SEC. 78. The defendant may be arrested as hereinafter prescribed, in the following cases:

1. In an action for the recovery of damages on a cause of action not arising out of contract, when the defendant is not a resident of the territory, or is about to remove therefrom, or when the action is for a wilful injury to person or to property, the defendant knowing the property to belong to another.

2. In an action for the recovery of money, or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors.

3. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer or officers of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such; or by any other person in a fiduciary capacity, or for misconduct or neglect in office, or in a professional employment.

5 How. 148, 827, 707. 3 Sanf.

4. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff, and with intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

TITLE 11.

5 How. 143; 8 Barb. 169.

5. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought.

6. When the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

2 Sanf. 729.

But no female shall be arrested in any action, except for a wilful injury to person or property.

Order of arrest.

SEC. 79. An order for the arrest of the defendant shall be obtained from a judge of any district court in this territory.

How obtained.

SEC. 80.* The order may be made when it shall appear to the judge, by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, and that the case is one of those mentioned in section seventy-eight, which affidavit shall be supported by the additional affidavit of some other disinterested person, that the case is one of those mentioned in section seventy-eight. The affidavits shall be either positive, or upon information or belief. They shall state the facts upon which the information and belief are founded. If an order of arrest be made, the affidavits shall be filed with the clerk of the court in which the action is brought.

Security by plaintiff.

SEC. 81. Before making the order, the judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars. If the undertaking be executed by the plaintiff without sureties, he shall annex thereto an affidavit that he is a resident and householder, or freeholder within the territory, and worth double the sum specified in the undertaking, over all his debts and liabilities.

Order, when made.

SEC. 82. The order may be made to accompany the summons, or at any time afterwards before judgment. It shall require the sheriff of the county where the defendant may be found, forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a time therein mentioned to the clerk of the court in which the action is pending.

Service of affidavit and order.

SEC. 83. The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver to him a copy thereof.

Arrest. 5. J. R. 182.

SEC. 84. The sheriff shall execute the order by arresting the defendant, and keeping him in custody until discharged by law.

Defendant, when to be discharged.

SEC. 85. The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail, or upon depositing the amount mentioned in the order of arrest as provided in this act.

Bail, how given.

SEC. 86. The defendant may give bail, by causing a written undertaking to be executed in favor of the plaintiff by two or more sufficient sureties, stating their places of residence, to the effect that the defendant shall at all times render himself amenable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he be arrested for the cause mentioned in the fourth subdivision of section seventy-eight, an undertaking to the same effect as that provided by section one hundred and twelve.

Surrender of defendant.

SEC. 87. At any time before a failure to comply with the undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

1. A certified copy of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and shall, by a certificate in writing, acknowledge the surrender.

2. Upon the production of a copy of the undertaking and sheriff's certificate, a judge of the District Court may, upon a notice to the plaintiff of eight days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and the papers used on said application, they shall be exonerated accordingly. But this section shall not apply to an arrest for cause, mentioned in the fourth subdivision of section seventy-eight, so as to discharge the bail from an undertaking given to the effect provided by section one hundred and twelve.

Ib.

SEC. 88. For the purpose of surrendering the defendant, the bail, at any time and place, before they are finally charged, may themselves arrest him, or by a written authority, indorsed on a certified copy of the undertaking, may empower the sheriff or any other person of suitable age and discretion to do so.

Bail, how proceeded against.

SEC. 89. In case of the failure to comply with the undertaking, the bail may be proceeded against by action only.

How exonerated.

SEC. 90. The bail may be exonerated either by the death of the defendant or his imprisonment in the penitentiary, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution thereof, within twenty days after the commencement of the action against the bail, or within such further time as may be granted by the court.

Order of arrest; undertaking, when to be filed. Plaintiff must except to undertaking within ten days.

SEC. 91. Within the time limited for that purpose, the sheriff shall file the order of arrest in the office of the clerk of the court in which the action is pending, with his return indorsed thereon, together with a certified copy of the undertaking of the bail; or if the defendant be arrested, and bail be not given, he shall file a certified copy of the order of arrest, with his return indorsed thereon. The plaintiff, within ten days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. If no notice be served within ten days, the original undertaking shall be filed with the clerk of the court.

Notice of justification.

SEC. 92. Within ten days after the receipt of notice, the sheriff or defendant may give to the plaintiff, or his attorney, notice of the

New undertaking, if other bail.

justification of the same, or other bail, (specifying the places of residence of the latter,) before a judge of the District Court, or the clerk of the court in which the action is pending, at a specified time and place, the time to be not less than five nor more than ten days thereafter, except by consent of parties. In case other bail be given, there shall be a new undertaking in the form prescribed in section eighty-six.

Qualifications of bail.

SEC. 93. The qualifications of bail shall be as follows:

1. Each of them shall be a resident of the territory; but no counsellor or attorney at law, sheriff, clerk of the District Court, or other officer of such court, shall be permitted to become bail in any action.

2. Each of them shall be worth the amount specified in the order of arrest, or the amount to which the order may be reduced, as provided in this act, over and above all debts and liabilities, and exclusive of property exempt from execution; but the judge or clerk of the court, on justification, may allow more than two sureties to justify severally in amounts less than that expressed in the order, if the whole justification be equivalent to that of two sufficient bail.

Justification of bail.

SEC. 94. For the purpose of justification, each of the bail shall attend before the judge or clerk of the court, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the judge or clerk in his discretion may think proper. The examination shall be reduced to writing, and subscribed by the bail, if required by the plaintiff.

Allowance of bail.

SEC. 95. If the judge or clerk find the bail sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and cause them to be filed with the clerk of the court in which the action is brought; and the sheriff shall thereupon be exonerated from liability.

Deposit instead of bail.

SEC. 96. The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. If the amount of the bail be reduced, as provided in this act, the defendant may deposit such amount instead of giving bail. In either case the sheriff shall give the defendant a certificate of the deposit made, and the defendant shall be discharged out of custody.

Payment by sheriff into court.

SEC. 97. The sheriff shall, immediately after the deposit, pay the same into court, and take from the clerk receiving the same two certificates of such payment, the one of which he shall deliver or transmti to the plaintiff or his attorney, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff to collect the sum deposited, as in other cases of delinquency.

Substitution of bail for deposit.

SEC. 98. If money be deposited, as provided in the last two sections, bail may be given and justified upon notice, as prescribed in section eighty-six, at any time before judgment, and on the filing of the undertaking and justification with the clerk, the money deposited shall be refunded by such clerk to the defendant.

SEC. 99. When money shall have been so deposited, if it remain on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk shall, under the direction of the court, apply the same in satisfaction thereof, and, after satisfying the judgment, shall refund the surplus, if any, to the defendant. If the judgment be in favor of the defendant, the clerk shall refund to him the whole sum deposited and remaining unapplied.

Deposit, how applied.

SEC. 100. If, after being arrested, the defendant escape or be rescued, the sheriff shall be liable as bail; but he may discharge himself from such liability by the giving and justification of bail, at any time before judgment.

Sheriff when liable as bail, his discharge from liability.

SEC. 101. If a judgment be recovered against the sheriff, upon his liability as bail, and an execution thereon be returned unsatisfied, in whole or in part, the same proceedings may be had on his official bond for the recovery of the whole or any deficiency, as in other cases of delinquency.

Proceedings against sheriff.

SEC. 102. The bail taken upon the arrest, shall, unless they justify, or other bail be given or justified, be liable to the sheriff by action for any damages which he may sustain by reason of such omission.

Bail liable to sheriff.

SEC. 103. The fees which shall be allowed to the sheriff for the food and maintenance of any defendant arrested under the provisions of this act, shall be at the rate of one dollar and twenty-five cents per day for every day that the defendant shall remain in custody; and the plaintiff shall be liable, in the first instance, for such fees, and, if required by the sheriff, shall pay the same weekly in advance; and such fees so paid shall be added to the costs taxed or accruing in the case, and be collected as other costs.

Sheriff's fees for keeping prisoner.

SEC. 104. If the plaintiff shall neglect to pay the fees mentioned in the last preceding section, for three days after a demand of payment, the sheriff may discharge the defendant out of custody.

Discharge for non-payment of fees by plaintiff.

SEC. 105. A defendant arrested may, at any time before the justification of bail, apply to the judge who made the order, or the court in which the action is pending, upon reasonable notice to the plaintiff, to vacate the order of arrest, or reduce the amount of bail. If the application be made upon affidavits on part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other proofs, in addition to those on which the order of arrest was made.

Motion to vacate order of arrest. 4 How. 288.

Affidavits on motion, 2 J R. 100.

SEC. 106. If, upon such application, it shall satisfactorily appear that there was not sufficient cause for the arrest, the order shall be vacated; or if it satisfactorily appear that the bail was fixed too high, the amount shall be reduced.

Order of arrest, when vacated.

Bail, when reduced.

TITLE 12.

# TITLE XII.

## *Provisional Remedy for the Claim and Delivery of Personal Property.*

SEC. 107. Delivery of personal property; when it may be claimed.
108 Affidavit and its requisites.
109. Requisition to sheriff, to take and deliver the property.
110. Security on part of the plaintiff and justification
111. Exception to sureties and proceedings thereon, or on failure to except.
112 Defendant, when entitled to re-delivery.
113. Justification of defendant's sureties.
114. Qualification and justification of sureties.
115. Property, how taken when concealed in building or enclosure.
116. Property, how kept.
117. Claim of property by third persons.
118. Notice of affidavit, when and where to be filed.

Delivery of personal property; when it may be claimed. 12 Barb. 347.

SEC. 107. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property as provided in this chapter.

Affidavit, its requisites.

SEC. 108. When a delivery is claimed, an affidavit shall be made by the plaintiff, or by some one in his behalf, showing:

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof, by virtue of a special property therein, the facts in respect to which shall be set forth.

2. That the property is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof, according to his best knowledge, information and belief.

3 How. 297.

4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure; and,

5. The actual value of the property.

Requisition to sheriff to take and deliver property.

SEC. 109. The plaintiff may thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county, where the property claimed may be, to take the same from the defendant and deliver it to the plaintiff.

Security on the part of the plaintiff and justification. 18 Wen. 581; 1 Barb. 20.

SEC. 110. Upon the receipt of the affidavit and notice, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or to his agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion; or, if neither have any known place of abode, by putting them in the post office, directed to the defendant at the post office nearest to him.

Exception to sureties, and proceedings thereon, or on failure to except.

SEC. 111. The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify on notice in like manner as upon bail on arrest. And the sheriff shall be responsible for the sufficiency of the sureties, until the objection to them is either waived, as above provided, or until they shall justify, or new sureties shall be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant, when entitled to re-delivery.

SEC 112. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section one hundred and seventeen.

Justification of defendant's sureties

SEC. 113. The defendant's sureties, upon a notice to the plaintiff or his attorney of not less than two nor more than six days, shall justify before a judge of the District Court, or the clerk of the court in which the action is pending, in the same manner as upon bail on arrest; upon such justification, the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completed or expressly waived, and may retain the property until that time; but if they or others in their place fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

Qualification and justification of sureties

SEC. 114. The qualification of sureties and their justification, shall be as prescribed by sections ninety-three and ninety-four, in respect to bail upon an order of arrest.

Property, how taken when concealed in building or enclosure.

SEC. 115. If the property or any part thereof be concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession; and, if necessary, he may call to his aid the power of his county.

Property, how kept. 5 Denio, 21.

SEC. 116. When the sheriff shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

Claim of property by third person.

SEC. 117. If the property taken be claimed by any other person than the defendant or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the grounds of such title or right, and serve the same upon the sheriff before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by an undertaking, executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county. And no claim to such property by any other person than the defendant or his agent, shall be valid against the sheriff unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

Notice, and affidavit, when and where to be filed.

SEC. 118. The sheriff shall file the notice and affidavit, with his proceedings thereon, with the clerk of the court in which the action is pending, within twenty days after taking the property mentioned therein; or, if the clerk reside in another county, shall mail or forward the same within that time.

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## TITLE XIII.

### *Provisional Remedy by Attachment.*

SEC. 119. When plaintiff may have property attached.
120. Writ of attachment, when and by whom granted.
121. Affidavit to be attached to writ: undertaking by plaintiff.
122. Writ, to whom directed, and what to contain.
123. What property may be attached.
124. Writ, how executed.
125. Proceedings when real estate is attached.
126 Third persons having property, &c., of defendant in their possession, when liable to plaintiff.
127. When certain persons must designate defendant's interest in corporation, to sheriff.
128. Perishable property must be sold: other property retained to answer judgment.
129. When sheriff may deliver property to defendant.
130. Action upon undertaking when a defence.
131. Sheriff, when to summon a jury to try the right of property.
132. Order of examination, when to issue to persons not parties to suit.
133. When plaintiff may exhibit interrogatories to garnishee.
134. Garnishee to answer plaintiff's interrogatories under oath.
135. Judgment against garnishee, not final until final judgment against defendant.
136. Plaintiff may except to garnishee's answer. Answer, on what terms amended.
137. Denial of answer by plaintiff: trial of issue; answer when deemed true if not excepted to or denied.
138. When judgment may be given against garnishee, although his answer be not excepted to or denied.
139. How garnishee may discharge himself from liability.
140 Debts not due defendant may be attached.
141. Costs between plaintiff and garnishee the same as in other actions.
142. Claimant of attached property may be examined.
143 Judgment, how satisfied.
144. Satisfaction of attachment and return of property.
145. Judgment for defendant and return of property.
146 Discharge by undertaking of attachment, and return of property.
147. Nature of undertaking by defendants.
148. Defendant may move to vacate attachment.
149. Plaintiff may oppose motion by affidavit.
150. Sheriff, when to return writ.

When plaintiff may have defend-

SEC. 119. In an action for the recovery of money, the plaintiff, at the time of issuing the summons, or at any time afterwards, may

ant's property attached.
7 Barb. 656.

have the property of the defendant attached in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

Writ of attachment, by whom granted, and when.

SEC. 120. A writ of attachment shall be issued by the clerk of the court in which the action is brought, whenever the plaintiff, his agent or attorney, shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim over and above all legal set-offs, and the nature thereof, and that, as the affiant verily believes, the defendant is either,

1. A foreign corporation; or
2. That he is not a resident of this territory, or has departed therefrom with the intent to delay or defraud his creditors, or to avoid the service of a summons; or
3. That he has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of his property, or any part thereof, with the intent to delay or defraud his creditors; or
4. That the debt was fraudulently contracted.

Affidavit to be attached to writ.

Undertaking by plaintiff

SEC. 121. The affidavit required by the last section shall be attached to the writ upon issuing the same. Before executing such writ, the sheriff to whom it is directed shall require a written undertaking on the part of the plaintiff, with one or more sureties, in a sum not less than two hundred dollars nor exceeding the amount claimed by the plaintiff, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Warrant to whom directed, and what to require.

SEC. 122. The writ shall be directed to the sheriff of any county in which property of such defendant may be, and shall require him to attach and safely keep all the property of such defendant within his county not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which shall be stated in conformity with the complaint, together with costs and expenses. Several writs may be issued at the same time to the sheriffs of different counties.

Interests in corporation, &c., liable to attachment.

SEC. 123. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, all debts due such defendant, and all other property, real or personal, in this territory, of such defendant, not exempt from execution, may be attached, and if judgment be recovered against him, be sold or collected to satisfy the judgment and execution.

Writ, how executed.

SEC. 124. The sheriff to whom the writ is directed and delivered, shall execute the same without delay, as follows:

1. Real property shall be attached by leaving with the occupant thereof, or if there be no occupant, in a conspicuous place thereon, a copy of the writ and affidavit certified by the sheriff.
2. Personal property, capable of manual delivery to the sheriff, shall be attached by taking it into his custody.
3. Stock or shares, or interest in stock or shares of any corporation or company, shall be attached by leaving with the president

or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ and affidavit, and a notice that the stock or interest of the defendant is attached in pursuance of such writ.

4. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits, or other personal property, a copy of the writ and affidavit, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ.

The sheriff shall note on the writ the day, month and year when the attachment was made, and shall make a full inventory of the property attached, and return the same, together with the undertaking of the plaintiff, with the writ of attachment.

Proceedings where real estate is attached.

SEC. 125. If real estate be attached by virtue of any writ of attachment, the sheriff shall make a certified copy of said writ and of his return thereon, and deliver it within ten days from the time of making such attachment, to the recorder of the county in which such real estate is situated, who shall file and record the same in a book to be kept for that purpose in the recorder's office. When so filed within ten days, the same shall be and continue a lien from the time of making the attachment, otherwise it shall be and continue a lien from the time it is filed, on all real estate mentioned or described in the return of the sheriff in such county, until the same shall be discharged; and when the said lien shall be discharged by the order of the court in which the action is pending, or by satisfaction of the judgment rendered in the suit, it shall be the duty of the recorder, when requested, to record the satisfaction piece, or transcript of the record of such order, in a book to be kept for recording such liens, and he shall enter on the margin of the page or pages where the said writ and return are so recorded, a minute of such discharge or satisfaction.

Liability of third persons having property of defendant.

SEC. 126. All persons having in their possession or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ, affidavit and notice, as provided in section one hundred and twenty-four, shall, unless such property be delivered up or transferred, or such debts be paid to the sheriff, be liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Certificate of defendant's interest in a corporation to be furnished.

SEC. 127. When the sheriff, with a writ of attachment against the defendant, shall apply to any person mentioned in the third and fourth subdivisions of section one hundred and twenty-four, for the purpose of attaching the property mentioned therein, such person shall furnish him with a certificate designating the number of shares of the defendant in the stock of the corporation or company, with any dividend or incumbrance thereon, or the amount and description of the property or credits held by such corporation, company, or person for the defendant, or the debt owing to the defendant. If such person refuse to do so, or if his certificate or statement be unsatisfactory to the plaintiff, he may be required by an order of the court in which the action is brought, or a judge thereof, to attend before such court or judge, and be examined on oath concerning the same, as hereinafter prescribed in this chapter; and disobedience to the order may be punished as a contempt.

Sale of perishable property, collection of debts, &c.

SEC. 128. If any of the property attached be perishable, the sheriff shall sell the same in the manner in which property is sold on execution. The proceeds thereof, and other property attached, shall be retained by him to answer any judgment that may be recovered in the action, unless it be delivered over as prescribed in the next section, or unless sooner subjected to execution upon another judgment, recovered previous to the issuing of the writ of attachment. Debts and credits attached may be collected by the sheriff, if the same can be done without suit, and his receipts shall be a sufficient discharge for the amount paid.

When sheriff may deliver property attached to defendant.

SEC. 129. The sheriff may deliver any of the property attached to the defendant, or to any other person claiming it and in whose possession it was attached, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, engaging to re-deliver it, or pay the value thereof to the sheriff, to whom execution upon a judgment obtained by the plaintiff in that action may be issued.

Action on undertaking, a defence for defendant.

SEC. 130. If an action be brought upon such undertaking against the principal or his sureties, it shall be a defence that the property for which the undertaking was given did not, at the execution of the writ of attachment, belong to the defendant against whom it was issued.

When sheriff to summon jury to try right of property

SEC. 131. If any personal property attached be claimed by a third person as his property, the sheriff may summon a jury to try the validity of such claim, and the same proceedings shall be had thereon, with the like effect, as in case of seizure upon execution.

Order of examination when issued to third persons

SEC. 132. Whenever the sheriff, with a writ of attachment against the defendant, shall apply to any person mentioned in section one hundred and twenty-four, for the purpose of attaching the personal property therein mentioned, and such person shall deny that he has any personal property of the defendant, or shall refuse to give the certificate required in section one hundred and twenty-seven, or if such certificate be unsatisfactory to the plaintiff, he may be required, by an order of the court in which the action is brought, or a judge thereof, to attend before such court or judge at a time therein stated, not less than ten days thereafter, and be examined on oath concerning the same.

Interrogatories to garnishee.

SEC. 133. At any time after the allowance of such order, and before such person shall be required to attend, the plaintiff may exhibit written allegations and interrogatories touching the property, stock or credits of the defendant, in the possession of or held by such person as garnishee, or debts owing to the defendant by him, and such garnishee shall be required to make full, direct and true answers to the same on oath.

Answer of garnishee.

SEC. 134. On the day when the garnishee shall be required to attend before the court or judge, he shall exhibit on oath his answer to the allegations and interrogatories of the plaintiff, unless for good cause shown a further time shall be allowed; in default of such answer, the plaintiff may take judgment by default against him, or the court or judge may, upon motion, compel him to answer by attachment of his body.

Judgment against garnishee.

SEC. 135. Such judgment by default may be proceeded on to final judgment, in like manner as in actions against defendants, but no final judgment shall be rendered against the garnishee until there shall be final judgment against the defendant, and in no case for a greater amount than that sworn to by the plaintiff, with interest and costs.

Plaintiff may except to garnishee's answer.

SEC. 136. The plaintiff may except to the answer of any garnishee for insufficiency, and if the same shall be adjudged insufficient, the court or judge may allow the garnishee to amend his answer, in such time and on such terms as shall be just, or the plaintiff may take judgment by default, or move the court or judge to attach the body of the garnishee to compel a sufficient answer.

Answer taken as true, if not denied or excepted to.

SEC. 137. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. If the answer be not excepted to or defined, in such time as the court or judge may deem proper, it shall be taken to be true and sufficient.

Judgment, when rendered, although answer be not excepted to or denied.

SEC. 138. If by the answer not excepted to, nor denied, or if, upon trial, it shall appear that the garnishee is possessed of property or effects of the defendant, or is indebted to the defendant, the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee for the proper amount in money, and in such case the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

How garnishee may discharge himself from liability before final judgment.

SEC. 139. Whenever any property, effects, money or debts, belonging or owing to the defendant, shall be confessed or found by the court, judge or jury, to be in the possession of the garnishee, he may at any time before final judgment, discharge himself by delivering the same to the sheriff.

Debts not due may be attached.

SEC. 140. Debts not yet due to the defendant may be attached, but no execution shall be awarded against the garnishee for such debts until they shall become due.

Costs against plaintiff for garnishee

SEC. 141. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

Claimant may be brought into court and examined.

SEC. 142. The defendant or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting the property attached, and may be thereupon examined on oath concerning the same.

Judgment of plaintiff, how satisfied.

SEC. 143. If judgment be recovered by the plaintiff against the defendant in such action, the sheriff shall satisfy the same out of the property attached by him, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution, so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or company, the sheriff shall execute to the purchaser a certificate of the sale, and the purchaser shall thereupon have all the rights and privileges in respect thereto which were had by the defendant. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

Satisfaction of attachment and return of property.

SEC. 144. If, after selling all the property attached by him remaining in his hands, and applying the proceeds to the payment of the judgment and costs, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other cases. Whenever the judgment and all the costs of the proceedings shall have been paid, the sheriff, upon reasonable demand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

Judgment for defendant and recovery of property.

SEC. 145. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales, and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, shall be delivered to the defendant or his agent, and the order of attachment shall be discharged.

Discharge of attachment by undertaking and release of the property. 7 Barb. 656

SEC. 146. Whenever the defendant shall have appeared in the action, he may apply, upon reasonable notice to the plaintiff, to the court or judge, for an order to discharge the attachment, upon the execution of the undertaking mentioned in the next section; and if the application be granted, all the proceeds of sales, and moneys collected by the sheriff, and all the property attached remaining in his hands, shall be released from the attachment and delivered to the defendant.

Undertaking of defendants.

SEC. 147. Upon such application, the defendant shall deliver to the court or judge an undertaking, executed by at least two sureties, approved by the court or judge, to the effect that the sureties will, on demand, pay to the plaintiff the amount of the judgment that may be recovered against the defendant in the action. The sureties may be required to justify, on application to the court or judge, and the property attached shall not be released from the attachment without their justification, if it be required.

Defendant may move to vacate the writ.

SEC. 148. The defendant may also, at any time before the time for answering expires, apply, on motion, to the court or judge to discharge the attachment, on the ground that the writ was improperly issued.

When plaintiff may oppose motion by affidavit.

SEC. 149. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the writ of attachment was issued. If, upon such application, it shall satisfactorily appear that such writ was improperly issued, it shall be discharged.

Sheriff when to return writ.

SEC. 150. When the writ of attachment shall be fully executed or discharged, the sheriff shall return the same, with his proceedings thereon, to the court in which the action was brought.

# CHAPTER II.

## OF THE TRIAL AND JUDGMENT IN ACTIONS AT LAW, ISSUES AND THE MODE OF TRIAL.

TITLE I. *Of Issues.*
TITLE II. *Trial by Jury.*
TITLE III. *Of the Verdict.*
TITLE IV. *Of Trial by the Court.*
TITLE V. *Of Trial by Referees.*
TITLE VI. *Of Exceptions.*
TITLE VII. *New Trial.*
TITLE VIII. *Of General Provisions.*
TITLE IX. *Of Judgments in General.*
TITLE X. *Of Judgment upon Failure to Answer.*
TITLE XI. *Of Judgment by Confession.*
TITLE XII. *Of submitting a Controversy without Action.*
TITLE XIII. *Of the Manner of Giving and Entering Judgment.*

### TITLE I.

### *Of Issues.*

SEC. 1. The different kinds of issues.
2. Issue of law.
3. Issue of fact
4. On issues both law and fact, the issue of law to be first tried.
5. Issues how tried.
6 Motion to postpone trial, on the absence of witnesses, how made.

The different kinds of issues

SECTION 1. Issues arise upon the pleadings, when a fact or conclusion of law is maintained by the one party, and controverted by the other. They are of two kinds:

1. Of law; and
2. Of fact.

Issue of law.

SEC. 2. An issue of law arises upon a demurrer to the complaint, answer, or reply, or to some part thereof.

Issue of fact.

SEC. 3. An issue of fact arises,

1. Upon a material allegation in the complaint, controverted by the answer; or
2. Upon new matter or a set-off controverted by the reply; or
3. Upon new matter in the reply.

Issue of law to be first tried. 2 Sanf. 635.

SEC. 4. Issues, both of law and of fact, may arise upon different parts of the pleadings in the same action. In such cases the issues of law shall be first tried, unless the court otherwise direct.

SEC. 5. An issue of law shall be tried by the court, unless referred upon consent as provided by statute. An issue of fact shall be tried by a jury, unless a jury trial be waived, or a reference be ordered as provided by statute. Issues, how tried.

SEC. 6. A motion to postpone a trial on the ground of the absence of evidence, shall only be made upon affidavit showing the materiality of the evidence expected to be obtained, and what diligence has been used to procure it, and also the name and residence of the witness or witnesses. The court may also require the moving party to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. Motion to postpone trial on the absence of evidence, how made.

## TITLE II.

### *Of Trial by Jury.*

SEC. 7. Jurors how chosen.
8. Challenges how made.
9. Challenge for cause, for what taken.
10. Challenge for cause, to be tried by court.
11. Oath or affirmation to be administered to jurors
12 Ballots, when to be returned to the box
13. Power of court over jurors.
14 When juror is taken sick, court how to proceed.
15. When jury retire under charge of an officer, duties of officer having charge of jury
16 Papers which the jury may refer to.
17. Jury may return to court for information.

SEC. 7. When the action is called for trial, the clerk shall prepare separate ballots, containing the names of the jurors summoned who have appeared and not been excused, and deposit them in a box. He shall then draw from the box twelve names, and the persons whose names are drawn shall constitute the jury. If the ballots become exhausted before the jury is complete, or if from any cause a juror or jurors be excused or discharged, the sheriff, under the direction of the court, shall summon from the bystanders or citizens of the county, so many qualified persons as may be necessary to complete the jury. The jury shall consist of twelve persons, unless the parties consent to a less number. The parties may consent to any number not less than three, and such consent shall be entered by the clerk on the minutes of the trial. Jurors how chosen.

SEC. 8. Either party may challenge the jurors, but when there are several parties on either side, they shall join in a challenge before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to three peremptory challenges. Challenge.

SEC. 9. Challenges for cause may be taken on one or more of the following grounds: Challenge for cause. 4 Denio 9.

1. A want of any of the qualifications prescribed by statute to render a person competent as a juror:

2. Consanguinity or affinity within the third degree to either party:

3. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party; or being a member of the family of either party; or a partner in business with either party; or being security on any undertaking or obligation for either party:

4. Having served as a juror, or been a witness on a previous trial between the same parties for the same cause of action:

5. Interest on the part of the juror in the event of the action, or in the main question involved in the action:

1 Denio, 281; 21 Wen. 509.

6. Having formed or expressed an unqualified opinion or belief as to the merits of the action:

7. The existence of a state of mind in the juror evincing enmity against either party.

Challenge for cause, how tried.

SEC. 10. Challenges for cause shall be tried by the court. The juror challenged, and any other person as a witness, may be examined on the trial of the challenge.

Oath or affirmation of jurors.

SEC. 11. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors in substance, that they, each of them, will well and truly try the matter in issue between the plaintiff and the defendant, and a true verdict give according to the evidence.

Ballots, how disposed of.

SEC. 12. When the jury is completed and sworn, the ballots containing the names of the jurors sworn shall be laid aside till the jury so sworn is discharged, and then they shall be returned to the box; and every ballot drawn containing the name of a juror not so sworn, shall be returned to the box as soon as the jury is completed.

Power of court over jurors

SEC. 13. The jurors may be kept together in charge of a proper officer, or may, in the discretion of the court, at any time before the submission of cause to the jury, be permitted to separate; in either case they may be admonished by the court that it is their duty not to converse with any other person, or among themselves, on any subject connected with the trial, or to express any opinion thereon, until the case is finally submitted to them.

When juror may be discharged; consequence thereof.

SEC. 14. If, after the impanneling of the jury, and before a verdict, a juror become sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case, unless the parties agree to proceed with the other jurors, a new juror may be sworn and the trial begin anew; or the jury may be discharged, and a new jury then or afterwards impanneled.

Deliberation of jury.

SEC. 15. After hearing the charge of the court, the jury may either decide in the court room, or retire for deliberation. If they retire, they shall be kept together in a room provided for them, or some other convenient place, under the charge of one or more officers, until they agree upon their verdict or are discharged. The officer shall, to the utmost of his ability, keep the jury together, separate from other persons; he shall not suffer any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict; and he shall not, before the verdict is rendered, communicate

13 Wen. 55

to any person the state of their deliberations, or the verdict agreed upon.

Papers which the jury may refer to.

SEC. 16. Upon retiring for deliberation, the jury may take with them the pleadings in the cause, and all papers (except depositions) which have been received as evidence on the trial, or copies of such parts of public records, or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession. They may also take with them notes of the testimony or other proceedings on the trial, taken by themselves, or any of them; but none taken by any other person, except by consent of the parties.

Instructions, how given.

SEC. 17. After the jury have retired for deliberation, if there be a disagreement between them, as to any part of the testimony, or if they desire to be informed of any point of law arising in the cause, they may require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the parties or counsel.

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## TITLE III.

### *Of the Verdict.*

SEC. 18 Verdict is either general or special.
19 Verdict in action to recover personal property
20 When jury may render special or general verdict.
21. When special verdict controls general.
22. In action for the recovery of money, jury when to assess damages.
23. Informal verdict, how corrected.

General and special verdicts.

5 Hill, 634.

SEC. 18. The verdict of a jury is either general or special. A general verdict is that by which the jury pronounce generally upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury find the facts only, leaving the judgment to the court.

Verdict in action for personal property.

SEC. 19. In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or the defendant, by his answer, claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof, and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention, or taking and withholding such property.

When juries may render either special or general verdict.

SEC. 20. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the clerk and entered upon the minutes.

When special controls general verdict.

SEC. 21. When a special finding of facts shall be inconsistent with the general verdict, the former shall control the latter, and the court shall give judgment accordingly.

In actions for recovery of money, jury when to assess damages.

SEC. 22. When a verdict is found for the plaintiff in an action for recovery of money, or for the defendant when a set-off for the recovery of money is established, beyond the amount of the plaintiff's claim as established, the jury shall also assess the amount of recovery; they may also, under the direction of the court, assess the amount of the recovery when the court give judgment for the plaintiff on the answer.

Informal verdict, how corrected. 7 J. R. 32.

SEC. 23. If the verdict be informal, it may be corrected by the jury under the advice of the court, or the jury may be again sent out. When rendered, the verdict shall be entered by the clerk on his minutes.

## TITLE IV.

### *Trial by the Court.*

SEC. 24. Trial by jury may be waived.
25. When question of fact is tried by court, decision when and how given.

Trial by jury, how waived. 1 Sanf. 457.

SEC. 24. Trial by jury may be waived by the several parties to an issue of fact, in actions on contract, and with the assent of the court in other actions, in the manner following:

1. By failing to appear at the trial;
2. By written consent, in person, or by attorney, filed with the clerk;
3. By oral consent in open court, entered in the minutes.

Trial of fact by the court. 2 Comst. 406.

SEC. 25. Upon the trial of an issue of fact by the court, its decision shall be given in writing, and filed with the clerk within twenty days after the court at which the trial took place. In giving the decision, the facts found, and the conclusions of law, shall be separately stated. Judgment upon the decision shall be entered accordingly.

## TITLE V.

### *Trial by Referees.*

SEC. 26. All trials referable by consent
27. When reference may be compulsorily ordered.
28 Number of referees, and how chosen.
29. Qualification of referees chosen by court.
30. Trial by referees, how conducted, report of referees, &c.

All issues referable by consent.

SEC. 26. All or any of the issues in the action, whether of fact or law, or both, may be referred upon the written consent of the parties.

When references may be compulsorily ordered.

SEC. 27. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:

1. When a trial of an issue of fact shall require the examination of a long account on either side, in which case the referees

may be directed to hear and decide the whole issue, or to report upon any specific question of fact involved therein; or

2. When the taking of an account shall be necessary for the information of the court, before judgment upon an issue of law, or for carrying a judgment or order into effect; or
3. When a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of the action; or
4. When it is necessary for the information of the court in a special proceeding.

Referees, how chosen.

SEC. 28. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties. If the parties do not agree, the court or judge may appoint one or more, not exceeding three, who reside in the county in which the action is brought or the proceeding is triable.

Qualifications of referees chosen by the court.

SEC. 29. When the appointment of referees is made by the court or judge, each referee shall be:

1. Qualified as a juror as provided by statute;
2. Competent as a juror between the parties.

Trial by and report of referees 8 Barb 119; 3 Coms. 168.

SEC. 30. The trial by referees shall be conducted in the same manner as a trial by the court. They shall have the same power to administer oaths to witnesses and to grant adjournments, as the court upon such trial. They shall state the facts found, and the conclusions of law separately, and their decision shall be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue, shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.

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## TITLE VI.

### *Of Exceptions.*

SEC. 31. Nature of an exception; must be material.
32. Exceptions, how stated.
33 Exceptions require no particular form.
34. Report of referees, when deemed excepted to without special notice of exception.

Exceptions must be material. 3 Hill 159; 4 do. 119.

SEC. 31. An exception is an objection taken at the trial to a decision upon matter of law, whether such trial be by jury, court, or referees, and whether the decision be made during the formation of a jury, or in the admission of evidence, or in the charge to the jury, or at any other time from the calling of the action for trial, to the rendering of the verdict or decision. But no exception shall be regarded on a motion for a new trial, or on an appeal, unless the exception be material, and affect the substantial rights of the parties.

How stated.

SEC. 32. The point of the exception shall be particularly stated, and may be delivered, in writing, to the judge, or entered in his minutes, and, at the time or afterwards, be corrected until made conformable to the truth.

Form of exception. 23 Wen. 316.

SEC. 33. No particular form of exception shall be required. The objection shall be stated, with so much of the evidence or other matter as is necessary to explain it, but no more.

Report of referees when deemed excepted without special notice of exception.

SEC. 34. When a cause has been tried by the court, or by referees, and the decision or report is not made immediately after the closing of the testimony, the decision or report shall be deemed excepted to on a motion for a new trial, or on appeal, without any special notice that an exception is taken thereto.

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## TITLE VII.

### *Of New Trial.*

SEC. 35 Definition of new trial.
36 New trial, when granted.
37. Application for new trial, when to be on affidavit.
38 Motion for new trial, how made, and when heard.
39. Affidavits for new trials may be refuted by counter affidavits.

New trial defined.

SEC. 35. A new trial is a re-examination of an issue of fact in the same court, after a trial and decision by a jury, court, or referees.

When granted.

SEC. 36. The former verdict or other decision may be vacated, and a new trial granted on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party:

1. Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;

10 Wen. 595.
18 J. R. 459;
5 Wen. 114;
7 do. 331.

2. Misconduct of the jury or prevailing party;

3. Accident or surprise which ordinary prudence could not have guarded against;

4. Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial;

15 Wen 368;
5 Cow 106;
2 J. R. 63;
2 Cow 479;
12 Wen. 602;
1 Cain. 162

5. Excessive damages, appearing to have been given under the influence of passion or prejudice;

6. Insufficiency of the evidence to justify the verdict or other decision, or that it is against law;

7. Error in law occuring at the trial, and excepted to by the party making the application.

Application, when to be on affidavit.

SEC. 37. When the application is made for a cause mentioned in the first, second, third and fourth subdivisions of the last section, it shall be upon affidavit, setting forth the facts upon which such application is based, which affidavit shall be filed with the clerk.

Motion, how made and when heard.

SEC. 38. If, upon the giving of a verdict or other decision, either party shall move for a new trial, the reasons for the same, and the affidavits, if any, in support thereof, shall be filed as soon as practicable, and the motion shall be heard when the parties shall have had a reasonable time to prepare therefor.

Affidavits and counter affidavits.

SEC. 39. If the motion be supported by affidavits, counter affidavits may be offered by the adverse party; and if the cause be newly discovered evidence, the affidavits of any witness or witnesses showing what their testimony will be, shall be produced, or good reasons shown for their non-production; and, in the consideration of any motion for a new trial, reference may be had to any proceedings in the case, prior to the verdict, or other decision sought to be set aside.

## TITLE VIII.

### *Of General Provisions.*

SEC 40 Conclusions of law and fact, how submitted.
41. Provisions respecting trials by jury are applicable to trials by referees.

Conclusions of law and fact how submitted.

SEC. 40. Any party may, and if required by the court shall, when the evidence is closed, submit in distinct and concise propositions, the conclusions of fact which he claims to be established, or the conclusions of law which he desires to be adjudged, or both. They may be written and handed to the court, or at the option of the court, oral, and entered in the judge's minutes; but in either case they shall be entered with any exceptions that may be taken by either party.

Provisions of this chapter applicable to trials by referees.

SEC. 41. The provisions of this chapter respecting trials by jury shall be applied, so far as they are in their nature applicable, to trials by the court or referees, and in the same manner the provisions respecting trials by the court shall apply to trials by referees.

## TITLE IX.

### *Judgment in General.*

SEC. 42 Definition of judgment.
43 & 44. Judgment may be for or against any of the parties.
45. When an action may be dismissed; or new suit entered.
46. Judgment, when to be rendered on the merits.

Judgment, what.

SEC. 42. A judgment is the final determination of the rights of the parties in the action.

May be for or against several defendants.

SEC. 43. Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between themselves.

Ib.

SEC. 44. In an action against several defendants the court may, in its discretion, render judgment against one or more of them, whenever a several judgment is proper, leaving the action to proceed against the others.

When action may be dismissed, or non-suit entered.

SEC. 45. An action may be dismissed, or a judgment of non-suit entered in the following cases:

1. By the plaintiff himself, at any time before trial, unless set-off be interposed as a defence. If the defendant shall have been arrested, or his property delivered to, or attached by the plaintiff, by virtue of a provisional remedy which has been allowed, the undertaking shall thereupon be delivered by the clerk to the defendant, who may have his action thereon;

2. By either party, upon the written consent of the other;

3. By the court, when the plaintiff fails to appear on the trial, and the defendant appears and asks for the dismissal;

4. By the court, when upon the trial, and before the final submission of the case, the plaintiff abandons it;

5. By the court, upon motion of the defendant, when upon the trial the plaintiff fails to prove a sufficient cause for the jury.

Judgment on the merits.

SEC. 46. In every case, other than those mentioned in the last section, the judgment shall be rendered on the merits.

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## TITLE X.

### *Judgment upon Failure to Answer.*

SEC. 47. Judgment, when it may be had on proof of service and complaint.

Judgment on failure to answer.

SEC. 47. Judgment may be had on proof of the service of the summons and complaint, if the defendant fail to answer the complaint, as follows:

1. In an action arising upon contract for the recovery of money only, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted, the court, upon the application of the plaintiff, shall direct the clerk to enter the default of the defendant, and immediately thereafter enter judgment for the amount mentioned in the summons, including the costs against the defendant, or against one or more of several defendants, in the cases provided for in section thirty-four of the last chapter.

2. In other actions, if no answer be filed with the clerk of the court within the time prescribed by law, or such further time as may have been granted, the court shall, in like manner, direct the clerk to enter the default of the defendant, and thereafter the plaintiff may apply, at that or any subsequent term of the court, for the relief demanded in the complaint. If the taking of an account, or the proof of any fact, be necessary to enable the court to give judgment or to carry the judgment into effect, the court may take the account or hear the proof, or may, in its discretion, order a reference for that purpose. And when the action is for the recovery of damages only, or of specific real or personal property, with damages for the holding thereof, the court may order the damages to be assessed by a jury; or if, to determine the amount of damages, the examination of a long account be necessary, by a reference as above provided.

3. In actions, when the service of the summons shall be by publication, the plaintiff may, in like manner, apply for judgment, and the court shall thereupon require proof to be made of the demand mentioned in the complaint; and, if the defendant be not a resident of the territory, shall require the plaintiff or his agent to be examined on oath respecting any payments that have been made to the plaintiff, or to any one for his use on account of such demand, and may render judgment for the amount which he is entitled to recover. Before rendering judgment, the court may, in its discretion, require the plaintiff to cause to be filed satisfactory security, to

abide the order of the court, touching the restitution of any property collected or received under the judgment, in case the defendant or his representatives shall be admitted to defend the action, and succeed in the defence.

4. The court may, in its discretion, before final judgment, set aside any default, upon affidavit showing good and sufficient cause, and upon such terms as may be deemed reasonable.

## TITLE XI.

### *Judgment by Confession.*

SEC. 48. Judgment by confession of claim in action.
49. Judgment by confession of claim not in action.
50 Statement in writing, what to contain
51. Filing statement and entering judgment.
52 Executions, how issued.

SEC. 48. Any defendant, in an action pending in the District Court, may personally appear before the clerk of such court, either in term time or in vacation, and, with the assent of the plaintiff, or his attorney, confess judgment for the amount admitted to be due, whereupon judgment shall be entered accordingly by the clerk. Confession by judgment of claims in action.

SEC. 49. A judgment by confession may also be entered without action, in term time or in vacation, either for money due, or to become due, or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed in the next two sections. Ib.; not in action.

SEC. 50. A statement in writing shall be made, signed by the defendant, and verified by his oath, to the following effect: Statement to be in writing

1. It shall authorize the entry of judgment for a particular sum:

2. If it be for money due, or to become due, it shall state concisely the facts out of which it arose, and shall show that the sum confessed is justly due, or to become due:

3. If it be for the purpose of securing the plaintiff against a contingent liability, it shall state concisely the facts constituting the liability, and shall show that the sum confessed therefor does not exceed the same.

SEC. 51. The statement shall be filed with the clerk of the District Court in which the judgment is to be entered, who shall indorse upon it and enter in the judgment book a judgment for the amount confessed, with five dollars cost. The statement and affidavit, with the judgment indorsed, shall thereupon become the judgment roll. Filing statement and entering judgment.

SEC. 52. Executions may be issued on judgments by confession, as in other cases; and when such judgment is payable in instalments, the execution may issue for such instalments as have become due, with interest thereon and the costs of judgment; and whenever any other instalments become due, execution may, in like manner, be issued for the collection and enforcement of the same. Executions how issued.

## TITLE XII.

### *Submitting Controversy without Action.*

SEC. 53. Controversy, how submitted without action.
54. Judgment the same as other cases, but without costs.
55 Judgment may be enforced or appealed from as in an action.

Controversy how submitted without action.

SEC. 53. Parties to a question in difference, which might be the subject of an action at law, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties; the court shall thereupon hear and determine the case, and render judgment thereon as if an action were depending.

Such judgment, how entered.

SEC. 54. Judgment shall be entered in the judgment book as in other cases, but without costs for any proceeding prior to the trial. The case, the submission, and a copy of the judgment, shall constitute the judgment roll.

May be enforced or appealed from.

SEC. 55. The judgment may be enforced in the same manner as if it had been rendered in an action, and shall, in the same manner, be subject to appeal.

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## TITLE XIII.

### *Manner of giving and entering Judgment.*

SEC 56. Judgments in trial by jury, when entered.
57. Case reserved for argument, how brought before the court.
58 When judgment shall be given for defendant.
59. Judgments in action for the recovery of personal property.
60. Clerk to keep "judgment" book.
61. Judgment roll, and what constitutes it.
62. Judgment, when docketed, and when a lien on real property.
63. Judgment lien docket.
64. Satisfaction, when to be entered in lien docket.

Judgment in trials by jury, when entered.

SEC. 56. When a trial by jury has been had, judgment shall be entered by the clerk, in conformity to the verdict, within four days after the rendition thereof, unless an affidavit or statement of grounds for a new trial shall be filed, or unless the court order the case to be reserved for argument or further consideration, or grant a stay of proceedings.

When case reserved for argument to be brought before court.

SEC. 57. When the case is reserved for argument or further consideration, as mentioned in the last section, it may be brought by either party before the court for argument, at the first special term thereafter.

Judgment for defendant.

SEC. 58. If a set-off, established at the trial, exceed the plaintiff's demand so established, judgment for the defendant shall be given for the excess; or, if it appear that the defendant is entitled to any other affirmative relief, judgment shall be given accordingly.

Judgment in action for the recovery of personal property.

SEC. 59. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and damages for the detention. If the property have been delivered to the plaintiff, and the defendant claim a return thereof, judgment for the defendant may be for a return of the property, or the value thereof, in case a return cannot be had, and damages for taking and withholding the same.

Clerk to keep judgment book.

SEC. 6. The clerk shall keep, among the records of the court, a book for the entry of judgments, to be calledthe "judgment book," in which each judgment shall be entered, and shall specify clearly the relief granted, or other determination of the action.

Judgment roll.

SEC. 61. Immediately after entering the judgment, the clerk shall attach together, and file the following papers, which shall constitute the judgment roll:

1. In case the complaint be not answered by any defendant, the summons and complaint, or copies thereof, with the proof of service, and memorandum, indorsed on the complaint, that the default of the defendant in not answering was entered, and a copy of the judgment;

2. In all other cases, the summons, pleadings or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, bill of exceptions, and all orders relating to a change of parties, or in any way involving the merits and necessarily affecting the judgment.

Judgments, in what cases and how docketed. 6 Barb. 308; 7 do. 341.

SEC. 62. On filing a judgment roll, judgment shall be docketed by the clerk of the court in the county where it shall be rendered, and in any other county, upon filing with the clerk of the district court of such county, a transcript of the original docket, and thereupon it shall become a lien on all the real property of the judgment debtor, not exempt from execution, in any county where it shall be docketed. Such lien shall extend to all the real property of the judgment debtor, owned by him at the time of docketing the judgment, or which he may afterwards acquire, until the lien expires. Such lien shall continue for five years from the time of the rendition of the judgment, unless it be previously satisfied.

Judgment lien docket.

SEC. 63. The docket mentioned in the last section, is a book which the clerk shall keep in his office, to be called the "judgment lien docket," with each page divided into eight columns, and headed as follows: judgment debtors; judgment creditors; amount of judgment; time of entry; when entered in judgment book; appeals when taken; judgment of appellate court; satisfaction when entered. The names of the judgment debtors shall be entered in the docket in alphabetical order.

Satisfaction, when to be entered in lien docket.

SEC. 64. Satisfaction of a judgment shall be entered by the clerk in the judgment lien docket, when an execution shall be returned satisfied, or upon an acknowledgment of satisfaction filed with the clerk, made in the manner of an acknowledgment of a conveyance of real property, or made in the presence of the clerk, or within two years after the judgment by the attorney of record, unless a revocation of his authority be previously filed. Whenever a judgment shall be satisfied in fact, otherwise than upon an execution, it shall be the duty of the party or attorney to give such acknowledgment, and, upon motion, the court may compel it, or may order the entry of satisfaction to be made without it.

# CHAPTER III.

## EXECUTIONS

TITLE I. *The Execution.*
TITLE II. *Proceedings Supplementary to the Execution.*

## TITLE I.

### *The Execution.*

SEC. 1. Execution may issue in five years
2 Execution after five years, to be issued on the leave of court.
3. Other judgments how enforced.
4. Different kinds of executions.
5. Writ of execution; to whom directed, what to contain.
6. Execution may be issued to any county in territory.
7. To be returnable in sixty days.
8. Execution against the person, in what cases and when.
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13. Verdict to be in writing, when an indemnity to the sheriff.
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15. Withdrawal of claim by claimant before verdict
16 Sheriff may sell, notwithstanding verdict for claimant, if indemnified.
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20. Sales, how made.
21. When defendant may retain personal property levied on.
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23 Delivery of property to purchaser.
24 Real property, when and where not subject to redemption
25 Who may redeem
26. When, and on what terms judgment debtor, or lien creditor, may redeem.
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32 Purchaser and redemptioner, when entitled to rents
33 Liability of judgment creditor to purchaser in case of eviction.
34. Contribution among judgment debtors.

Execution within five years

SECTION 1. The party in whose favor judgment is given, may, at any time within five years after the entry thereof, issue a writ of execution for its enforcement, as prescribed by statute.

After five years, to be issued only by leave of court. 4 How. 257

SEC. 2. After the lapse of five years from the entry of judgment, an execution can be issued only by leave of the court, upon motion, with personal notice to the adverse party, unless he be absent or non-resident, or cannot be found to make such service, in which case such service may be made by publication, or in such other manner as the court shall direct. Such leave shall not be given unless it be established by the oath of the party, or other satisfactory proof, that the judgment, or some part thereof, remains unsatisfied and due. When the judgment shall have been rendered in a justice's court, and docketed in the office of the clerk of the

District Court, such application for leave to issue an execution shall be to the District Court of the county where the judgment was rendered.

Other judgments, how enforced.

SEC. 3. When a judgment requires the payment of money or the delivery of real or personal property, the same may be enforced in those respects by execution, as provided in this chapter. When it requires the performance of any other act, a certified copy of the judgment may be served on the party against whom it is given, or the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuse, he may be punished by the court as for a contempt.

Three kinds of executions.

SEC. 4. There shall be three kinds of executions: one against the property of the judgment debtor; another against his person; and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same.

Writ of execution.

SEC. 5. The writ of execution shall be issued in the name of the United States, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff, or coroner when the sheriff is a party or interested, and shall intelligibly refer to the judgment, stating the court, the county where the judgment roll is filed, the names of the parties, the amount of the judgment, if it be for money, and the amount actually due thereon, and shall require the sheriff substantially as follows:—

1. If it be against the property of the judgment debtor, it shall require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter;
2. If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property or trustees, it shall require the sheriff to satisfy the judgment with interest out of such property;
3. If it be against the person of the judgment debtor, it shall require the sheriff to arrest such debtor, and commit him to the jail of the county until he shall pay the judgment with interest, or be discharged according to law.
4. If it be for the delivery of the possession of real or personal property, it shall require the sheriff to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the sheriff to satisfy any costs, charges, damages or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered to be specified therein, if a delivery thereof cannot be had, and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter.

To what counties executions

SEC. 6. When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county in this

TITLE 1.

may be issued.

territory. When it requires delivery of real or personal property, it shall be issued to the sheriff of the county where the property, or some part thereof, is situated. Executions may be issued at the same time to different counties.

Returnable in 60 days.

SEC. 7. The sheriff shall indorse upon a writ of execution the time when he received the same, and such execution shall be returnable, within sixty days after its receipt by the sheriff, to the clerk with whom the judgment roll is filed.

Execution against the person, in what cases and when.

SEC. 8. If the action be one in which the defendant might have been arrested, as provided by statute, an execution against the person of the judgment debtor may be issued to any county within the jurisdiction of the court, after the return of the execution against his property, unsatisfied in whole or in part.

Arrest on execution.

SEC. 9. A person arrested on execution shall be imprisoned within the jail or the liberties thereof, and kept at his own expense until satisfaction of the execution, or his legal discharge; but the plaintiff shall be liable, in the first instance, for such expense as in other cases of arrest, in the same manner and to the same extent as prescribed in sections 103 and 104 of chapter one.

What property liable.

SEC. 10. All property, real and personal, of the judgment debtor, not exempt by law, and which is liable to an attachment, shall be liable to execution. Until a levy, property shall not be affected by the execution.

Property exempt from execution.

SEC. 11. The following property shall be exempt from execution, except as herein otherwise specially provided:—

1. All wearing apparel of every person or family.

2. The miscellaneous library and school-books of every individual and family, not exceeding in value one hundred and fifty dollars, and all family pictures.

11 Wen. 44; 21 do 871; 5 Denio, 119.

3. To each household, ten sheep with their fleeces and the yarn or cloth manufactured therefrom, two cows, five swine, and provision and fuel for the comfortable subsistence of such householder and family for six months.

4. To each householder all household goods, furniture and utensils, not exceeding in value three hundred dollars.

5. The tools, implements, material, stock, apparatus, team, vehicle, horses, harness, library or other things, to enable any person to carry on the profession, trade, occupation or business in which such person may be wholly or principally engaged, not exceeding in value four hundred dollars. The word team in this subdivision shall be construed to mean either one yoke of oxen, or a pair of horses or mules, as the case may be.

6. A sufficient quantity of hay, grain, and feed for keeping, for three months, the animals mentioned in the several subdivisions of this section as exempted from execution. But no article of property mentioned in this section shall be exempt from an execution issued on a judgment, recovered for its price, or upon a mortgage thereon.

Jury to try the right of property, when.

SEC. 12. When personal property shall be seized by virtue of any execution, and any person other than the defendant shall claim such property or any part thereof, and shall give notice thereof in writing, the sheriff may summon from his county six persons, qualified as jurors between the parties, to try the validity of the claim, giving five days' notice of the time and place of the trial to the plaintiff in the execution or his attorney.

Written verdict, signed by foreman, an indemnity to sheriff.

SEC. 13. The sheriff, at the request of either party, shall summon witnesses and compel them to attend and give testimony, and he shall administer the necessary oaths to the jurors and witnesses. On the trial, the defendant and the claimant may be examined by the plaintiff as witnesses, and the verdict of such jury, being rendered in writing, and signed by the foreman, shall be a full indemnity to the sheriff, proceeding in accordance therewith.

Fees of sheriff, jury and witnesses, by whom paid.

SEC. 14. The sheriff, jury and witnesses shall be allowed the like fees, as for similar cases in the District Court, and shall be paid by the claimant if the verdict is against him, otherwise by the plaintiff, and the sheriff may levy all such costs, upon the goods and chattels of the party made liable to pay them, as on execution.

Withdrawal of claim.

SEC. 15. If at any time before the jury return, the claimant withdraw his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

Indemnity of sheriff by undertaking.

SEC. 16. Notwithstanding the verdict of the jury be for the claimant, yet the sheriff shall proceed to sell the property seized in satisfaction of the execution, if the plaintiff tender to him a written undertaking, executed by two or more good and sufficient sureties, residents of the county, in double the value of the property, to the effect that he will indemnify the sheriff against all damages and costs which he may sustain in consequence of the seizure and sale of such property, and moreover, that he will pay to any person or persons claiming title to such property, all damages which he or they may sustain in consequence of such seizure and sale.

Return of undertaking, prosecution thereon by claimant.

SEC. 17. If such undertaking be given, it shall be returned by the sheriff, together with the execution, and filed with the clerk who issued the execution, and the claimant may prosecute his suit upon such undertaking, and recover such damages as a jury may assess.

Notice of sale.

SEC. 18. Before the sale of property on execution, notice thereof shall be given as follows:

1. In case of personal property, by posting written or printed notice of the time and place of sale, in three public places of the county where the sale is to take place, not less than ten days successively;

2. In case of real property, by posting a similar notice, particularly describing the property, for four weeks successively, in three public places of the county where the property is situated, and also where the property is to be sold, and publishing a copy thereof once a week, for the same period, in a newspaper of the county, if there be one, or if there be none, then in a newspaper published nearest to the place of sale;

Penalty for selling without or defacing notice.

SEC. 19. Any officer selling without the notice prescribed by the last section, shall forfeit one hundred dollars to the party aggrieved, in addition to his actual damages; and a person wilfully taking down, or defacing the notice posted, if done before the sale or satisfaction of the execution, and without the consent of the parties, shall forfeit fifty dollars to the party aggrieved; but the validity of the sale shall not be affected by either act.

Sales, how made

SEC. 20. All sales of property under execution shall be made by auction, between nine o'clock in the morning and sunset. After sufficient property has been sold to satisfy the execution, no more shall be sold. Neither the officer holding the execution, nor his deputy, shall become a purchaser or be interested in any purchase at such sale. When the sale is of personal property capable of manual delivery, it shall be within view of those who attend the sale, and be sold in such parcels as are likely to bring the highest price; and when the sale is of real property, and consisting of several known lots or parcels, they shall be sold separately; or when a portion of such real property is claimed by a third person, and he requires it to be sold separately, such portion shall be thus sold. Sales of real property shall be made on the premises, if occupied by the defendant or any person holding under him, otherwise such sales shall be made at the house door.

When personal property levied on may be retained by defendant.

SEC. 21. When the sheriff shall levy upon personal property by virtue of an execution, he may permit the defendant to retain the same, or any part thereof, in his possession until the day of sale, upon the defendant executing a written undertaking to the sheriff, with sufficient surety in double the value of such property, to the effect that it shall be delivered to the sheriff at the time and place of sale; and, for non-delivery thereof, an action may be maintained upon such undertaking by the sheriff or the plaintiff in the execution.

Postponement of sale by sheriff.

SEC. 22. If, at the time appointed for the sale, the sheriff should be prevented from attending at the place appointed, or, being present, should deem it for the advantage of all concerned to postpone the sale for want of purchasers, or other sufficient cause, he may postpone the sale not exceeding one week, next after the day appointed, and so from time to time for the like cause, giving notice of every adjournment by public proclamation made at the same time.

Delivery of property to purchaser.

SEC. 23. When the purchaser of any personal property capable of manual delivery, shall pay the purchase-money, the sheriff shall deliver to him the property, and if, desired, shall give him a certificate of the sale and payment. When such personal property shall not be capable of manual delivery, the sheriff shall execute and deliver to the purchaser a certificate of sale and payment.

When, and when not subject to redemption

SEC. 24. Upon a sale of real property, when the estate is less than a leasehold of two years' unexpired term, the sale shall be absolute. In all other cases the real property shall be subject to redemption, as provided in this chapter. The sheriff shall give to the purchaser a certificate of the sale, containing:

Certificate.

1. A particular description of the property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;

4. When subject to redemption, it shall be so stated, a duplicate of which certificate shall be filed by the sheriff with the recorder of deeds of the county.

By whom property may be redeemed.

SEC. 25. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided by the following persons or their successors in interest.

1. The judgment debtor, or his successor in interest, in the whole, or any part of the property;[1]

2. A creditor having a lien by judgment, mortgage or otherwise in the property sold, or on some share or part thereof, subsequent to that on which the property was sold.

The persons mentioned in the second subdivision of this section, after having redeemed the property, are termed redemptioners.

Judgment debtor or lien creditor may redeem.

SEC. 26. The judgment debtor or lien creditor may redeem the property from the purchaser within three months after the day of sale, on paying him the amount of his purchase with ten per cent. thereon in addition, together with the amount of any taxes which the purchaser may have paid thereon after the purchase, and if the purchaser be also a creditor, having a lien prior to that of the redemptioner, the amount of such lien with interest.

Redemption after redemption.

SEC. 27. If the property be so redeemed by a redemptioner, either the judgment debtor or any other lien creditor may, within sixty days after the last redemption, again redeem it on paying the sum paid on the last redemption with interest, and the amount of taxes which the last redemptioner may have paid thereon, and unless his lien be prior to that of such last redemptioner, the amount of such lien with interest. The property may be again, and as often as the judgment debtor, or any lien creditor or redemptioner is disposed, redeemed from the last previous redemptioner, within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with interest, and the amount of any taxes paid thereon by such last redemptioner, and the amount of any liens held by such last redemptioner, prior to his own, with interest. Notice of redemption shall in all cases be given to the sheriff.

Sheriff's deed to be approved by the District Court.

SEC. 28. If no redemption be made within three months after the sale, the purchaser shall be entitled to a conveyance; or if so redeemed, whenever sixty days shall have elapsed, and no other redemption has been made, and notice thereof given, the time for redemption shall have expired, and the last redemptioner shall be entitled to a sheriff's deed. If the judgment debtor redeem at any time before the time for redemption expires, the effects of the sale shall be terminated, and he be restored to his estate. The sheriff, before delivering a deed to any purchaser or redemptioner, shall submit the same to the District Court for the county in which they lie, for its approval, and if there be no irregularity in the proceeding concerning the sale, such court shall indorse thereon its approval, and thereupon the sheriff shall deliver such, and to the person entitled to the same.

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[1] 2 Wen 507; 15 do 248; 22 do. 118; 3 Barb. 70; 1 Barb. Ch. 53.

Payment for redemption and tender thereof to whom made.

SEC. 29. The payment for the redemption of property may be made to the purchaser or redemptioner, as the case may be, or, for him, to the officer who made the sale ; and the tender of the money shall be equivalent to payment.

Redemption by lien creditors.

SEC. 30. A lien creditor, seeking to redeem property, shall produce, to the officer or person from whom he seeks to redeem, and serve, with his notice to the sheriff,

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court of the county where the judgment is docketed : if he redeem upon a mortgage or other lien, a note of the record thereof, certified by the recorder ;
2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto ; and
3. An affidavit by himself, or his agent, showing the amount then actually due on the lien.

Order to stay waste till time of redemption expires.

SEC. 31. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or judgment creditor ; but it shall not be deemed waste for the person in possession of the property at the time of sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used ; or to use it in the ordinary course of husbandry ; or to make the necessary repairs to buildings thereon ; or to use wood and timber on the property therefor ; or for the repair of fences ; or for fuel in his family while he occupies the property.

Purchaser and redemptioner, when entitled to rents.

SEC. 32. The purchaser, from the time of sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, shall be entitled to receive from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof.

Liability of judgment creditor to purchaser in case of eviction.

SEC. 33. If the purchaser of real property, sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularity in the proceedings concerning the sale, or of the reversal or discharge of the judgment, he may recover the price paid, with interest, from the judgment creditor. If the recovery be in consequence of the irregularity of the proceedings concerning the sale, the judgment may, by order of the court, upon notice to the debtor, be revived, and a new execution issued for the price paid on the sale, with interest. Such judgment shall be a lien on the real estate of a judgment debtor, only from the time of its revival.

Contribution among judgment debtors.

SEC. 34. When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel contributions from the others ; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of his property, or before sale, he may compel repayment from the principal. In such cases, the person so paying or contributing, shall be entitled to the benefit of the judgment to enforce contribution or repayment, if, within thirty days after his payment, he file with the clerk of the court where the judgment was rendered, notice of his payment and claim to contribution or re-payment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered.

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## TITLE II

### *Proceedings Supplementary to the Execution.*

SEC. 35. Order to examine judgment debtor.
36 Examination of judgment debtor.
37. When judge may issue warrant to arrest debtor
38. Sheriff's receipt, when a discharge to debtor of judgment debtor.
39. When garnishee may be summoned to appear and answer.
40. Creditor may exhibit allegations to garnishee.
41. Answer of garnishee, consequence of default
42 Judgment against garnishee
43. When creditor may except to garnishee's answer.
44. Creditor may deny such answer, and issue thereon.
45. Judgment against garnishee. his allowance for trouble.
46. When garnishee may discharge himself.
47. Examination of judgment debtor or claimant.
48. Costs of judgment creditor and garnishee.
49 Execution, how issued against garnishee.
50 Certain earnings of judgment debtor exempt.
51. Public officer not liable to answer as garnishee.

Order to examine judgment debtor.

SEC. 35. After the issuing of an execution against property, and upon proof by affidavit of a party, or otherwise, to the satisfaction of the District Court, or any judge thereof, that the judgment debtor has property or effects which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by an order, require the judgment debtor to appear and answer under oath concerning the same, before such court or judge, or before a referee appointed by such court or judge, at the time and place specified in the order, the place to be within the county in which the judgment debtor resides; and disobedience to such order may be punished as for a contempt.

Examination

SEC. 36. The judgment debtor, on his appearance, may be examined on oath concerning his property, and his answers reduced to writing, and filed with the clerk of the court by whom the execution was issued. Either party may also examine witnesses in his behalf, and if, during such examination, any property, rights or credits of such judgment debtor, not exempt by law, be discovered, they may be levied upon by execution.

Judge may issue warrant to arrest debtor.

SEC. 37. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the court or judge may, upon proof, by affidavit of a party or otherwise, to his satisfaction, that there is danger of the debtor leaving the territory, or concealing himself, and that there is reason to believe he has property which he unjustly refuses to apply to such judgment, issue a warrant requiring the sheriff of any county where such debtor may be, to arrest him and bring him before the court or judge; upon being brought before the court or judge, he may be examined on oath, and if it then appear that there is danger of the debtor leaving the territory, and that he has property which he has unjustly refused to apply to such judgment, he may be ordered to enter into an undertaking with one or more sureties, that he will from time to time attend before the court or judge, as may be directed, and that he will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the judge.

Sheriff's receipt, when a discharge.

SEC. 38. After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid.

Examination of persons, &c., indebted to judgment debtor. When garnishee may be summoned to answer, &c.

SEC. 39. After the issuing or return of an execution against property of a judgment debtor, or of any one of several debtors in the same judgment, and upon an affidavit that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding twenty-five dollars, the District Court, or any judge thereof, may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place, before such court or judge, or a referee appointed by such court or judge, and answer concerning the same. If before a referee, the examination shall be taken by the referee, and certified to the court or judge. The court or judge may also, in their discretion, require notice of such proceeding to be given to any party to the action, in such manner as may seem to him proper.

Allegations, &c. of creditor to garnishee.

SEC. 40. At any time after the making of such order, the judgment creditor may exhibit written allegations and interrogatories touching the property, stock or credits of the judgment debtor in the possession of, or held by such person or corporation as garnishee, or debts owing to the judgment debtor by him or it, and such garnishee shall be required to make full, direct and true answers to the same on oath.

Answer of garnishee.

SEC. 41. On the day when the garnishee shall be required to attend before the court, judge, or referee, he shall exhibit, on oath, his answer to the allegations and interrogatories of the judgment creditor, unless, for cause shown, a further time shall be allowed; in default of such answer the judgment creditor may take judgment by default against him, or the court or judge may punish him as for contempt.

Judgment.

SEC. 42. Such judgment by default may be proceeded on to final judgment, in like manner as actions against defendants; but no final judgment shall be rendered against the garnishee for a greater amount than that specified in the execution.

Creditor may except to garnishee's answer.

SEC. 43. The judgment creditor may except to the answer of any garnishee for insufficiency, and if the same shall be judged insufficient, the court or judge may allow the garnishee to amend his answer, in such time and upon such terms as shall be just; or the judgment creditor may take judgment by default, or move the court or judge to attach the body of the garnishee to compel a sufficient answer.

Denial of answer.

SEC. 44. The judgment creditor may deny the answer of the garnishee in whole or in part, and the issue shall be tried as ordinary issues between plaintiff and defendant. If the answer of the garnishee be not excepted to or denied, in such time as the court or judge may deem proper, it shall be taken to be true and sufficient.

Judgment against garnishee; his allowance for trouble.

SEC. 45. If by the answer not excepted to nor denied, or if upon trial it shall appear that the garnishee is possessed of property or effects of the judgment debtor, or is indebted to him, the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee for the proper amount in money, but if such debt be not yet due, execution shall not be awarded against the garnishee until it becomes due; and in such cases the court may make him a reasonable allowance for his trouble in answering, to be paid out of the fund in his hands.

How garnishee may discharge himself.

SEC. 46. Whenever any property, effects, money or debts, belonging or owing to the judgment debtor, shall be confessed or found by the court, judge, referee or jury, to be in the possession of the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the sheriff.

Examination of debtor.

SEC. 47. The judgment debtor or claimant may be required to attend before the court, judge or jury, for the purpose of giving any necessary information respecting the property or effects alleged to be in the possession of the garnishee, and may be thereupon examined on oath concerning the same.

Costs of creditor and garnishee.

SEC. 48. In all cases of controversy between the judgment creditor and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

Execution against garnishee.

SEC. 49. Execution may be issued to collect any judgment rendered against a garnishee, as in ordinary cases of judgment against defendants.

Certain earnings of judgment debtor, exempt.

SEC. 50. The earnings of a judgment debtor for personal services, at any time within sixty days next preceding the judgment against a garnishee, shall not be included in such judgment, when it shall be made to appear by the affidavit of the judgment debtor, or otherwise, that such earnings are necessary for the use of a family, supported wholly or partly by his labor.

Public officers not liable to answer as garnishee.

SEC. 51. No territorial or county treasurer, sheriff, constable, or other public officer, shall be liable to answer as garnishee for moneys in his possession as such public officer, belonging to, or claimed by any judgment debtor.

# CHAPTER IV.

## OF EVIDENCE.

TITLE I. *Of the Competency of Witnesses.*
TITLE II. *Of the Manner of Compelling the Attendance of Witnesses.*
TITLE III. *Of Examination of Witnesses.*
TITLE IV. *Of Depositions taken in the Territory.*
TITLE V. *Of Depositions taken out of Territory.*
TITLE VI. *Of Proceedings to Perpetuate Testimony.*
TITLE VII. *Of Provisions Relating to Records, Documents and other Writings.*

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## TITLE I.

### *Of the Competency of Witnesses.*

SEC. 1. Want of religious belief not to disqualify.
2. No person to be excluded on account of interest.
3. To whom last section inapplicable.
4. Conviction for crime to affect credibility only.
5. Persons incompetent to testify.
6. Certain persons not to be examined.

SECTION 1. No person, if otherwise competent, shall be disqualified from being a witness on account of the want of religious belief.

Competency of witness. SEC. 2. No person offered as a witness shall be excluded from giving evidence by reason of his interest in the event of the action.

7 Barb 120; 2 Sanf. 686, 732; 14 Barb. 657. SEC. 3. The last section shall not apply to a party to the action, nor to any person for whose immediate benefit it is prosecuted or defended. When an assignor of a thing in action or contract is examined as a witness, on behalf of any person deriving title through or from him, the adverse party may offer himself as a witness to the same matter in his own behalf, and he shall be so received. But such assignor shall not be admitted to be examined in behalf of any person deriving title through or from him, against any executor or administrator.

Conviction for crime affects witness' credibility. SEC. 4. No person offered as a witness shall be excluded from giving evidence, by reason of conviction for crime, but such conviction may be shown to affect his credibility.

Persons incompetent to testify. SEC. 5. The following persons shall not be competent to testify:

1. Those who are of unsound mind, or intoxicated at the time of their production for examination;
2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly;
3. Negroes, mulattoes and Indians, or persons having one-half or more of Indian blood, in an action or proceeding to which a white person is a party.

Persons not to be examined. SEC. 6. In order to encourage confidence, and to preserve it inviolate, the following persons shall not be examined as witnesses:

1. A husband shall not be examined for or against his wife, nor a wife for or against her husband; nor can either, during marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other; nor to a criminal action or proceeding for a crime committed by one against the other;

2. An attorney or counsellor shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment;

3. A clergyman or priest shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs;

4. A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient;

5. A public officer shall not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

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## TITLE II.

### *Manner of Compelling the Attendance of Witnesses.*

SEC 8. Witnesses not compelled to attend
9. Subpœna, its requisites.
10. Subpœna, how issued.
11. Subpœna, how served.
12 & 13. Persons in court may be compelled to testify
14. Penalty for disregarding subpœna.
15. Attachment, when to issue
16. Order to examine a prisoner
17. Order, how obtained

SEC. 8. No person shall be obliged to attend as a witness before any court of record, judge, justice of the peace, commissioner, referee, or other officer, in any civil action out of the county in which he resides, unless his residence be within twenty miles of such court, judge, justice of the peace, commissioner, referee or other officer. And no person shall be compelled to attend as a witness in any civil action or proceeding, unless the fees be paid or tendered to him, which are allowed by law for one day's attendance as a witness, and for travelling to and returning from the place where he is required to attend, provided such fees be demanded by him at the time of service of the subpœna. When compelled to attend.

SEC. 9. The subpœna may require not only the personal attendance of the person to whom it is directed, at a particular time and place, to testify as a witness, but may also require him to bring with him any books, documents, or other things under his control. Subpœna.

SEC. 10. The subpœna shall be issued as follows:

1. To require attendance before a court of record, or at the trial of an issue therein, it shall be issued in the name of the United How issued.

States, and be under the seal of the court before which the attendance is required, or in which the issue is pending.

2. To require attendance out of such a court, before a judge, justice of the peace, commissioner, referee, or other officer, authorized to administer oaths, or take testimony in any matter under the laws of this territory, it shall be issued by such judge, justice of the peace, commissioner, referee, or other officer before whom the attendance is required:

3. To require attendance before a commissioner appointed to take testimony by a court of any other state, territory or country, it may be issued by any judge or justice of the peace, in places within their respective jurisdictions.

How served. SEC. 10. Such subpœna may be served by any white person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him a copy thereof, or by leaving such copy at the place of his abode.

Person in court compelled to testify. SEC. 11. A person present in court or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

Penalty for disregarding subpœna. 11 Wen. 636; 12 do. 147. SEC. 12. If any person duly served with a subpœna, and obliged to attend as a witness shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action.

SEC. 13. Such failure to attend, as required by the subpœna, shall also be considered a contempt, and upon due proof of the service thereof, the witness may be punished by a fine not exceeding fifty dollars.

Attachment. SEC. 14. The court, judge, justice of the peace or other officer, in such case, may issue an attachment to bring such witness before them, to answer for the contempt; and also to testify as a witness in the cause in which he was subpœnæd.

Order to examine prisoner. SEC. 15. If the witness be a prisoner confined in a jail or prison within this territory, an order for his examination in prison, upon deposition, or for his temporary removal and production before a court or officer, for the purpose of being orally examined, may be made.

Order how obtained. SEC. 16. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

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## TITLE III.

### *Examination of Parties.*

SEC. 17. A party may examine his adversary.
18. Plaintiff may file interrogatories for discovery.
19. Answer to interrogatories to be filed.
20. Interrogator may examine adverse party.
21. Rebutting testimony.
22. Effect of refusal to testify.
23. Testimony by a party not responsive to the inquiries, may be rebutted by the oath of the party calling him.
24. Person for whom action is brought or defended, may be examined.

A party may SEC. 17. A party to an action or proceeding, may be examined as a witness, at the instance of the adverse party, or of one of several adverse parties, and for that purpose may be compelled, in the same manner, and subject to the same rules of examination as any other witness, to testify at the trial, or he may be examined on a commission.

examine his adversary. 3 Sanf. 718; 3 Comst. 489.

Interrogatories for discovery.

SEC. 18. Instead of the examination being had at the trial, as provided by the last section, the plaintiff, at the time of filing his complaint or afterwards, and the defendant, at the time of filing his answer, or afterwards, may file in the clerk's office, interrogatories for the discovery of facts and documents material to the support or defence of the action, to be answered on oath by the adverse party.

Answer to interrogatories.

SEC. 19. Such interrogatories shall be answered, and such answers filed in the clerk's office, within twenty days after the same are served on the party interrogated, unless for cause shown a further time be allowed by the court, or judge thereof.

Interrogator may examine adverse party.

SEC. 20. A party to an action having filed interrogatories to be answered by the adverse party, as prescribed by the last two sections, shall not thereby be precluded from examining such adverse party as a witness at the trial.

Rebutting testimony.

SEC. 21. The testimony of a party, either upon an examination at the trial, or upon interrogatories filed, may be rebutted by adverse testimony.

Effect of refusal to testify

SEC. 22. If a party refuse to attend, and testify at the trial, or to be examined upon a commission, or to answer any interrogatories filed, his complaint, answer or reply, may be stricken out and judgment taken against him, and he may also, in the discretion of the court, be proceeded against as in other cases for a contempt.

Testimony by a party not responsive to the inquiries, may be rebutted by the oath of the party calling him 2 Sanf. 399.

SEC. 23. A party examined by an adverse party, as in this chapter provided, may be examined on his own behalf in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to explain or qualify his answer thereto; or to discharge when his answer would charge himself, such adverse party may offer himself as a witness on his own behalf in respect to such new matter, and shall be received.

Person for whom action is brought or defended, may be examined.

SEC. 24. A person for whose immediate benefit the action is prosecuted or defended, though not a party to the action, may be examined as a witness in the same manner, and subject to the same rules of examination, as if he were named as a party.

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## TITLE IV.

### *Of Depositions taken in the Territory.*

SEC. 25. Depositions when taken.
26. Depositions before whom taken; notice to be given.
27. Oath and examination of witnesses.
28. Deposition, how taken.
29. Deposition, to whom sent.
30. Deposition, how received in evidence.
31. Deposition, when not to be used.
32. When deposition taken in one action may be used in another action.
33. Deposition in court below, may be used in appellate court.
34. When person may be compelled to give deposition.

Depositions when taken.

SEC. 25. The testimony of a witness in this territory, may be taken by deposition; to be read in evidence in any action, suit or proceeding, commenced and pending in any court in this territory, in the following cases:

1. When the witness resides out of the county, and more than twenty miles from the place of trial;

2. When the witness is about to leave the county and go more than twenty miles from the place of trial, and there is a probability that he will continue absent when the testimony is required;

3. When the witness is sick, infirm or aged, as to make it probable that he will not be able to attend at the trial.

Before whom taken.

SEC. 26. Either party may have the deposition of a witness taken in this territory, before any judge of the District Court, justice of the peace, clerk of the supreme or district courts, master in Chancery, mayor of a city or notary public, on serving upon the adverse party, or his attorney of record, previous notice of the time and place of examination. Such notice shall be at least three days, and in addition one day, Sundays excepted, for every twenty miles of the distance of the place of examination, from the residence of the person to whom notice is given, unless for a cause shown, a judge of the District Court prescribe a shorter time. When a shorter time is prescribed, a copy of the order shall be served with the notice.

What notice to be given.

Oath and examination of witnesses.

SEC. 27. Before proceeding to the examination, the witness shall be sworn by the officer taking the deposition, to testify the truth, the whole truth, and nothing but the truth, relating to the cause for which such deposition is taken; he shall then be examined by the parties, or their attorneys, if they shall think fit, or by the officer, either upon verbal or written interrogatories, on all the points which they shall deem material.

Deposition how taken.

SEC. 28. The deposition shall be written by the officer taking the same, or by the witness, or by some disinterested person in the presence and under the direction of such officer. When completed it shall be carefully read to, or by the witness, corrected if desired, and subscribed by him, and certified by the officer substantially as follows:

*Territory of Oregon,* } ss.
*County of*———, }

Form of certificate.

I, A. B; justice of the peace, in and for the said county, (or judge, clerk, &c., as the case may be,) do hereby certify that the above deposition was taken before me, and reduced to writing by myself (or witness, &c., as the case may be,) at ———, in said county, on the ——— day of ———, 18—, at ——— o'clock, in pursuance of notice; that the above named witness, before examination, was sworn (or affirmed) to testify the truth, the whole truth, and nothing but the truth, and that the said deposition was carefully read to (or by) said witness, and then subscribed by him.

Dated at ———, the ——— day of ———, 18—.

A. B., *Justice of the Peace.*

To whom sent

SEC. 29. The deposition shall be enclosed and sealed by the officer taking the same, and directed to the clerk of the court, arbitrators, referees, or justice of the peace, before whom the action is pending, or to such person as the parties in writing may agree upon, and either delivered to the clerk of the court, or other person, or transmitted through the mail or by some private opportunity.

How received in evidence.

SEC. 30. Such deposition may be used by either party, upon the trial or other proceeding, against any party giving or receiving the notice, subject to all legal exceptions, to the competency or credibility of the witness, or the manner of taking the deposition. But if the parties attend at the examination, no objection to the form of an interrogatory shall be made at the trial, unless the same was taken at the time of the examination.

When not to be used.

SEC. 31. No deposition shall be used, if it shall appear that the reason for taking it no longer exists: *Provided, however*, That, if the party producing the deposition in such case, shall show any sufficient cause, then existing, for using such deposition, it may be admitted.

When depositions may be used in another action.

SEC. 32. When the plaintiff in any action shall discontinue it, or when it shall be dismissed for any cause, and another action shall afterwards be commenced for the same cause, between the same parties or their respective representatives, all depositions lawfully taken in the first action, may be used in the other, in the same manner and subject to the same conditions and objections as if originally taken for such action: *Provided*, That the deposition shall have been duly filed in the court where the first action was pending, and shall remain in the custody of the court, from the termination of the first action until the commencement of the other.

Ib. when in appellate court.

SEC. 33. When an action shall have been appealed from one court to another, all depositions lawfully taken to be used in the court below, may be used in the appellate court, in the same manner, and subject to such exceptions for informality or irregularity, and none other, as were taken to such depositions in writing in the court below.

Witnesses how compelled, &c.

SEC. 34. Any witness may be subpœnæd and compelled by any officer authorized to take depositions, to appear and give his deposition at any place within twenty miles of the abode of such witness, in like manner and under the same penalties as he may be subpœnæd and compelled to attend as a witness in any court.

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## TITLE V.

### *Of Depositions taken out of the Territory.*

SEC. 35. Depositions may be taken out of territory.
36. Commission how to issue
37. Interrogatories, how settled.
38. Authority of commissioner.
39. Trial not to be postponed by reason of commission not returned, except, &c.

Depositions.

SEC. 35. The testimony of a witness out of this territory may be taken by deposition, to be read in evidence in any action, suit or proceeding, pending in any court in this territory.

TITLE 6.

Commission how to issue.

SEC. 36. The deposition of a witness out of the territory, shall be taken upon a commission issued by the clerk, under the seal of the court, upon an order of the court, or a judge thereof, which order may be made on the application of either party, upon giving to the adverse party ten days' previous notice in writing, together with a copy of the interrogatories intended to be put to such witness. It shall be issued to a person or persons, not exceeding three in number, agreed upon by the parties, or, if they do not agree, to any judge, justice of the peace, notary public, or other competent person selected by the court or judge granting the order for the commission.

Interrogatories, how settled.

SEC. 37. Such proper interrogatories, as well on part of the plaintiff as on part of the defendant, as the respective parties may prepare, to be settled, if they disagree as to form, by the court or judge thereof, granting the order for the commission, shall be annexed to the commission; or, where the parties agree to that mode, the examination may be without written interrogatories.

Authority of commissi'nr.

SEC. 38. The commission shall authorize the commissioner or commissioners to admininister an oath to the witness, and to take his deposition in answer to the several interrogatories annexed to such commission, or, when the examination is to be without interrogatories, in respect to the question in dispute; to certify the deposition to the court; and to direct it to the clerk of the court, or such other person designated or agreed upon, and forward it to him by mail or other usual channel of conveyance.

Trial not to be postponed, by reason of commission not returned

SEC. 39. A trial or other proceeding shall not be postponed by reason of a commission not returned, except upon affidavit or other evidence satisfactory to the court, that the testimony of the witness is necessary, and that proper diligence has been used to obtain it.

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## TITLE VI.

### *Of Proceedings to Perpetuate Testimony.*

SEC. 40. Testimony, how perpetuated.
41. Proceedings of court preparatory to hearing application.
42. Commission, when to issue.
43. Deposition, how taken.
44. Deposition, where filed, where used.]

Testimony how perpetuated.

SEC. 40. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim or interest in or to the subject concerning which he desires to perpetuate the evidence, and the names of all persons interested or supposed to be interested therein; and also the name of the witness proposed to be examined, which statement shall be under oath and filed in the District Court. If the subject of the proposed deposition relate to real estate within this territory, the statement shall be filed in the county where the lands, or any part thereof, lie; otherwise, in the county where the parties, or some of them, reside. Upon such statement, an application may be made to such court, or a judge thereof, to allow the examination of such witness.

**Proceedings preparatory to hearing application.** SEC. 41. The court or judge shall appoint a time and place for hearing such application, and shall order notice thereof, and of the statement, to be served on all persons mentioned therein as adversely interested in the matter. The notice shall be served personally on all those living in the territory, at least twenty days before the time of hearing the application. Upon those who are not residents of the territory, it shall be served by publication, or otherwise, in the same manner as a summons is served upon a non-resident.

**Commission when to issue.** SEC. 42. If upon such hearing of the parties, or of the applicant alone, should no adverse party appear, the court or judge shall be satisfied that there is sufficient cause for taking the deposition, an order shall be made, allowing the examination of the witness; and such court or judge shall direct a commission to issue therefor, in like manner as a commission to take the testimony of witnesses in other cases.

**Depositions, how taken.** SEC. 43. The deposition of such witness, whether residing in this territory or not, shall be taken upon written interrogatories, filed by the applicant, and cross interrogatories filed by any party adversely interested, if he shall think fit; and it shall be taken and returned substantially in the same manner as if taken upon commission, to be used in any cause pending in the same court.

**To be filed when used.** SEC. 44. The deposition, when returned, shall be filed in the office of the clerk of the court by whom the commission was issued, and if a trial be had between the person at whose request the deposition was taken, and the persons named in the statement, or any of them, or their successors in interest, upon proof of the death or insanity of the witness, or of his inability to attend the trial, by reason of age, sickness or settled infirmity, the deposition, or a certified copy thereof, may be used by either party, subject to all legal objections. But if the parties attend at the examination, no objection to the form of the interrogatory shall be made at the trial, unless the same were taken at the time of the examination.

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## TITLE VII.

### *Provisions relating to Records, Documents and other Writings.*

SEC. 45 Inspection of documents, how obtained.
46 Alterations in written instruments to be explained.
47. Records of foreign courts, how to be authenticated
48. Certified copies of deeds, &c., when received in evidence.
49. Copies of papers in certain territorial offices, when evidence.
50 Certificate of residence, when evidence.
51 Seal of office, how affixed.
52. Foreign statutes when evidence.

**Inspection of documents, &c., how obtained Sanf. 698.** SEC. 45. Any court in which an action is pending, or a judge thereof, may, upon notice, order either party to give to the other within a specified time, an inspection and copy, or permission to take a copy of any book, document or paper in his possession, or under his control, containing evidence relating to the merits of the action or the defence therein. If compliance with the order be refused, the court may exclude the book, document, or paper from being given in evidence; or if wanted as evidence, by the party applying, may direct the jury to presume it to be such as he alleges it to be; and the court may also punish the party refusing as for a contempt. This section shall not be construed to prevent a party from compelling another to produce books, papers or documents, when he is examined as a witness.

Alterations in writings. SEC. 46. Any party producing a writing as genuine, which has been altered, or appears to have been altered after its execution, in a part material to the question in dispute, and such alteration is not noted in the writing, shall account for the appearance or alteration. He may show that the alteration was made by another without his concurrence, or was made with the consent of the parties affected by it, or otherwise properly or innocently made. If he do that, he may give the writing in evidence, but not otherwise.

Records of foreign courts. SEC. 47. The records and proceedings of any court of the United States, or of any state or territory, shall be admissable in evidence, in all cases in this territory, when authenticated by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed.

Certified copies of deeds, &c. SEC. 48. Whenever any deed, conveyance, mortgage, bond or other writing, shall have been recorded or filed in pursuance of law, copies of such deed, conveyance, mortgage, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of office annexed, shall be received in evidence to all intents and purposes, as the originals themselves.

Copies of papers in certain territorial offices. SEC. 49. Copies of all papers on file in the offices of the surveyor-general of Oregon, secretary of Oregon territory, territorial treasurer, territorial auditor, and any county treasurer, or any matter recorded in either of the said offices, duly certified by the respective officers, with the respective seals of office annexed, shall be evidence in all the courts of this territory.

Certificate of residence. SEC. 50. Any certificate of residence and cultivation upon the public lands, issued by the surveyor-general of Oregon in pursuance of law, shall be evidence in all courts in this territory.

Seal of office, how affixed. SEC. 51. A seal of a court or public office, when required to any writ, process or proceeding, or to authenticate a copy of any record, or document, may be affixed by making an impression directly on the paper, which shall be as valid as if made upon a wafer or on wax.

Foreign statutes, when admitted. SEC. 52. Printed copies of the statute laws of any state, territory, or foreign government, if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts in this territory, and on all other occasions, as presumptive evidence of such laws.

# CHAPTER V.

## WRITS OF ERROR.

SEC 1. What judgments re-examinable on writs of error.
2 Time for prosecuting such writ.
3. Writ of error when deemed to have been issued.
4. Notice by clerk to defendant.
5. Notice how served.
6 Transcript, what to contain.
7. Time of assigning errors, and filing joinders.
8. Judgment may be set aside, reversed, affirmed, or modified.
9 Additional undertaking to pay judgment, damages, &c
10. Form of undertaking
11. Proceedings in case of death, &c, of parties, after filing undertaking
12. Persons who may prosecute writ of error
13 Sale of land in certain cases, not to be affected by reversal, &c.
14 Supreme Court when equally divided, cause to stand over.
15 Special verdict when directed

Judgments, re-examinable on writ of error.

SEC. 1. Every final judgment, order or decision of a district court, except in Chancery, may be re-examined upon a writ of error; in the same court for error in fact, and in the Supreme Court for error in law.

Time for prosecuting such writ.

SEC. 2. Every such writ shall be prosecuted within two years and not after. But if the party entitled to have such writ shall be absent from the territory, and shall not have been personally served with process, nor appeared to the action, or if such party be an infant, married woman or imprisoned or insane, then such writ may be prosecuted within two years from the removal of such disability and not after; provided that the absence from the territory shall not entitle the party to a longer time than five years; the time limited shall include the day on which the judgment is rendered or the order or decision is made, or on which the disability ceases.

When deemed to have been issued.

SEC. 3. A writ of error shall be deemed to have issued on the day on which the plaintiff in error shall file in the office of the clerk of the District Court, when the record is a written undertaking, executed by two sureties, to be approved by the clerk for the payment of all the costs of such proceeding; and it shall not be necessary in any stage of the proceedings, actually to sue out the writ of error.

Notice by clerk to defendant.

SEC. 4. On the filing of such undertaking, the clerk shall issue a notice to the defendant in error, under the seal of the court, specifying the court in which, and the time when he is to appear to protect his interests: and if the præcipe direct the writ of error to be made returnable to the Supreme Court, he shall send thither a transcript of the record under the seal of the court. Such notice may be, as nearly as applicable, in the following form:

*Territory of Oregon,* } ss.
*County of* }

To C—— D——

Form of notice.

You are hereby notified that A. B. has sued out a writ of error from the Supreme Court, to reverse the judgment of the District

Court of said county, given in your favor against the said A. B., at the ———— term of 18——; and unless you appear in the said Supreme Court on the ——— Monday of ————, 18——, the cause will be heard in your absence.

[SEAL.] Witness the seal of the said District Court, the —— day of ———, 18——.

E. F., *Clerk.*

Service of notice.

SEC. 5. The notice may be served on the defendant in error, or his attorney of record, by any sheriff within his county, and shall be by delivering him a copy thereof, or it may be served by any other disinterested person; and the return of the sheriff indorsed thereon, or the affidavit of such other disinterested person, shall be evidence thereof, and if served ten days before the return day, the cause may be heard at that term. If returned not found, the Court of Error may make such order for the service or publication of notice, as shall appear most likely in the particular case, to convey a knowledge of the proceeding to the defendant in error, and may then proceed as if the notice had been personally served.

By publication.

Transcript.

SEC. 6. The transcript shall contain a copy of the writ and return, the pleadings, the journal entries and bills of exception, the execution and return, and such other matters as the court or judge shall have ordered to be made part of the record. Either party may have a *certiorari* to supply any diminution of the record.

Certiorari.

Assigning of errors and filing joinders.

SEC. 7. The Court of Error may affix the time for assigning errors and filing joinders. If errors in law be assigned, no joinder shall be necessary. One or more errors in fact may be assigned, and the defendant may put in the common joinder as a demurrer thereto, or may traverse or confess, and avoid the facts assigned for error, and a separate issue shall be made on each.

Judgment may be reversed or affirmed, &c.

SEC. 8. The judgment or other matter complained of, may be affirmed, or may be reversed or set aside in whole or in part, or may be modified, or a different judgment or order may be substituted for that complained of, and the cause may be remitted to the District Court, for such further proceedings as the Supreme Court by mandate shall direct. Execution may issue from the Supreme Court, or its judgments may be executed by the District Court on a mandate for that purpose.

Additional undertaking, &c.

SEC. 9. If the undertaking for costs contain an additional undertaking to pay the judgment, if affirmed, and damages, or any new or modified judgment that may be given against the plaintiff in error, then all further proceedings by way of executing the judgment, shall forthwith cease until the further order of the Court of Error. In such case, if the judgment be affirmed or modified, or any new judgment be given against the plaintiff in error, damages may be awarded to the defendant in error, not exceeding ten per cent. upon the amount of the judgment, exclusive of interest and costs, if it manifestly appears that the proceeding was without probable cause, and merely for delay. And in cases where judgment is rendered against the plaintiff in error, judgment shall also be rendered

Damages to defendant.

Judgment against sureties.

against the sureties in the undertaking, to the extent of their liability, and execution shall issue against them accordingly.

SEC. 10. The undertaking for a writ of error may be in the following form:

A. B.
*vs.*
C. D.
District Court, County of ———. Judgment at ——— term, 18—.

Form of undertaking.

We promise to pay all costs that may be awarded against A. B., on his writ of error in this cause, (and also the judgment, if affirmed, and the damages, or any new or modified judgment that may be given against him.)

E. F.
G. H.

Death, etc., of parties.

SEC. 11. If, after the undertaking be filed, either party shall die, or being a single woman shall marry, the proper persons may, on *motion*, be made parties, and the cause shall proceed to judgment.

Who may prosecute writ.

SEC. 12. Any person who may be a party or privy in any judgment, order or decision, may prosecute a writ of error to reverse the same, and the reversal shall enure to the benefit of all parties and privies therein; and no other party or privy shall afterwards prosecute a writ of error for the same cause.

Sale of land, when not to be affected by reversal of judgment.

SEC. 13. The reversal of a judgment, order or decision, shall not affect the title of property sold upon an execution issued upon such judgment, order or decision, if such property be purchased at the sale by a stranger, but if purchased by the judgment creditor, the plaintiff in error may bring an action for the recovery thereof, and the court may award restitution or render such other judgment as justice shall require.

When cause to stand over

SEC. 14. When the Supreme Court shall be equally divided in opinion, the cause shall stand continued until all the judges are present.

Special verdict when directed.

SEC. 15. Whenever, on the trial of an action at law in the District Court, it shall be found to turn on important or doubtful principles of law, the court may direct a special verdict to be found; and in all cases the parties may agree upon the facts, and such agreement in writing, signed by the parties or their attorneys, shall be made part of the record; and all questions of law arising on special verdicts, agreed cases, motions for new trials, and all others in any manner arising in the district courts, in law or equity, may be adjourned into the Supreme Court for decision; and the Supreme Court may give judgment, or remand the cause, or make any order according to the law and justice of the case.

# CHAPTER VI.

## OF MISCELLANEOUS PROVISIONS IN ACTIONS AT LAW.

SEC. 1 Definition of an order and motion.
2 & 3. Motions and orders, how and when made.
4. When notice is necessary, it must be ten days before hearing.
5 & 6. Notice and other papers, how served.
7 & 8. Service by mail, how made.
9. When papers need not be served on defendant.
10 Service when party resides out of territory.
11 Party, under this chapter not liable to contempt.
12. Affidavits, &c., defectively entitled, valid.
13 Time, how computed.
14. Debts barred by lapse of time in other states.

Definition of an order and motion. SECTION 1. Every direction of a court or judge made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion.

Motion, how made. SEC. 2. Motions may be made to the court at term, or to a judge in vacation, unless otherwise provided by statute.

5 How. [illegible]; 2 Sand. 7[illegible]. SEC. 3. Motions shall be made within the district in which the action is triable. Orders made out of court, without notice, may be made by a judge of the court in which the action is brought in any part of the territory. No order to stay proceedings for a longer time than twenty days, shall be granted by a judge out of court, except upon previous notice to the adverse party.

Of notice of motion. SEC. 4. When a notice of a motion is necessary, it shall be served [illegible] before the time appointed for hearing; but the court or [illegible] may, [illegible] prescribe a shorter time.

[illegible] SEC. 5. [illegible] shall be in writing, and notices and other papers may be [illegible] manner prescribed in the [illegible] provided by statute.

SEC. 6. [illegible] the party or [illegible] may be [illegible]

[illegible] from [illegible] papers with [illegible] there [illegible] or when there [illegible] between the hours of [illegible] in the morning and [illegible] the evening, in a conspicuous place in the office, or if it be not open so to admit of such service, then by leaving them at the attorney's residence, with some person of suitable age and discretion.

[illegible] 2. If upon a party, it may be made by leaving the notice or [illegible] between the hours of six in the morning and nine in the evening, with some person of suitable age and discretion.

Service by mail. SEC. 7. Service by mail may be made, where the person making the service, and the person on whom it is to be made, reside in different places between which there is a regular communication by mail.

SEC. 8. In case of service by mail, the notice or other paper shall be deposited in the post office, addressed to the person on whom it is to be served, at his place of residence, and the postage paid; and in such case, the time of service shall be double that required in case of personal service. Ib. 4 How. 246.

SEC. 9. Where a defendant shall not have demurred, answered, or given the plaintiff or his attorney written notice of his appearance, service of notice or papers in the ordinary proceedings in an action, need not be made upon him, unless he be imprisoned for want of bail. When papers need not be served on defendant.

SEC. 10. Where a plaintiff or a defendant who has demurred, answered, or given notice of his appearance, resides out of the territory, and has no attorney in the action, the service may be made by mail, if his residence be known, if not known, on the clerk for the party. Service where party resides out of territory

SEC. 11. The provisions of this chapter shall not apply to the service of a summons, or other process, or of any paper to bring a party into contempt. Party not liable for contempt.

SEC. 12. An affidavit, notice, or other paper, without the title of the action or proceeding in which it is made, or with a defective title, shall be as valid and effectual for every purpose as if duly entitled, if it intelligibly refer to the action or proceeding in which it is made. Affidavits defectively entitled, valid.

SEC. 13. The time within which an act is to be done, as provided in this chapter, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded. Time, how computed.

SEC. 14. When [illegible] [illegible] [illegible] [illegible] the [illegible] estate of [illegible] [illegible] [illegible] and [illegible] the laws [illegible] [illegible] maintain[illegible] against a person [illegible] [illegible] against him [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] by lapse of time in other [illegible]

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## CHAPTER VII.

### [illegible]

SECTION 1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible] section 3.
6. Proceedings [illegible] for defendant.
7. [illegible]
8. [illegible]
9. When set-off equal or exceed plaintiff's demand.
10. Judgment, when to be rendered against plaintiff.

SECTION 1. In the following cases, and under the following circumstances, a defendant, in an action at law, may set off demands which he has against the plaintiff: Set-offs.

[illegible] 1. It must be a demand arising upon judgment or upon contract express or implied, whether such contract be written or unwritten, sealed or without seal; and if it be founded upon a bond or other contract having a penalty, the sum equitably due, by virtue of its condition only shall be set off;

Due to defendant in his own right. 19 Wen. 300; 1 Hill, 164. 2. It must be due to him in his own right, either as being the original creditor or payee, or as being the assignee and owner of the demand;

Must be liquidated or for property. 3. It must be a demand for property sold, for money paid, or for services done; or if it be not such a demand, the amount must be liquidated; or be capable of being ascertained by calculation;

When it must have existed. 4. It must have existed at the time of the commencement of the action, and must then have belonged to the defendant;

In what actions allowed. 5. It shall be allowed only in actions founded upon demands which could themselves be the subject of set-off, according to law.

Several defendants. 6. If there be several defendants, the demands set off must be due to all of them jointly;

Must be against plaintiff. 7 Wen. 327; 15 do. 625. 7. It must be a demand existing against the plaintiff in the action, unless the action be brought in the name of a plaintiff who has no real interest in the contract upon which the action is founded; in which case no set-off of a demand against the plaintiff shall be allowed, unless as hereinafter specified.

Assignor of contract. SEC. 2. If the action be founded upon a contract, other than a negotiable promissory note, or bill of exchange which has been assigned to the plaintiff, a demand existing against such plaintiff, or any assignor of such contract, at the time of the assignment thereof, and belonging to the defendant in good faith, before notice of such assignment, may be set off to the amount of the plaintiff's debt, if the demand be such as might have been set off against such assignor, while the contract belonged to him.

Or assignor of notes or bills. SEC. 3. If the action be upon a negotiable promissory note, or bill of exchange assigned to the plaintiff after it became due, a set-off, to the amount of the plaintiff's debt, may be made of a demand existing against any person or persons who shall have assigned or transferred such note or bill after it became due, if the demand be such as might have been set off against the assignor while the note or bill belonged to him.

Or person beneficially interested in suit. SEC. 4. If the plaintiff be a trustee for any other, or if the action be in the name of a plaintiff who has no real interest in the contract upon which the action is founded, so much of a demand existing against those whom the plaintiff represents, or for whose benefit the action is brought, may be set off, as will satisfy the plaintiff's debt, if the same might have been set off in an action brought by those beneficially interested.

In actions by executors. 8 Wen. 580; 21 do. 675; 2 Hill, 212; 6 Barb. 330. SEC. 5. In actions brought by executors and administrators, demands against their testators or intestates, and belonging to the defendant at the time of their death, may be set off by the defendant, in the same manner as if the action had been brought by, and in the name of the deceased.

Balance found for defendant. SEC. 6. When a set-off shall be established, in an action brought by executors or administrators, and a balance found due to the defendant, the judgment rendered therefor against the plaintiff, shall have the same effect as if the action had been originally commenced by the defendant. CHAP. 8.

SEC. 7. In actions against executors and administrators, and against trustees and others sued in their representative character, the defendants may set off demands belonging to their testators or intestates, or those whom they represent, in the same manner as the persons so represented would have been entitled to set off the same, in an action against them. Set-offs by executors, trustees, etc.

SEC. 8. To entitle a defendant to a set-off, he must set the same forth in his answer. Defendant must plead set-off.

SEC. 9. If the amount of the set-off, duly established, be equal to the plaintiff's debt or demand, judgment shall be entered that the plaintiff take nothing by his action: if it be less than the plaintiff's debt or demand, the plaintiff shall have judgment for the residue only. When set-off equals or exceeds plaintiff's demand.

SEC. 10. If there be found a balance due from the plaintiff in the action to the defendant, judgment shall be rendered in favor of the defendant for the amount thereof; but no such judgment shall be rendered against the plaintiff, when the contract which is the subject of the action shall have been assigned before the commencement of such action, nor for any balance due from any other person than the plaintiff in the action. Judgment against plaintiff.

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## CHAPTER VIII.

### OF COSTS IN ACTIONS AT LAW.

SEC 1. Allowance, when termed costs.
2 Costs, when allowed of course to plaintiff.
3. Costs when several actions are brought on one contract.
4. Costs, when allowed defendant.
5 When to one or more of several defendants
6 Amount of costs allowed to either party.
7. Disbursements in addition to costs.
8. Referee's fees.
9. Costs on postponement of trial.
10. Costs not allowed when tender has been made.
11. Plaintiff, when to pay costs from time of deposit, &c., by defendant.
12 Appellant from decision of a justice, when to pay costs
13. Guardian responsible for costs
14. Costs by and against executors, &c.
15. Costs against assignee.
16. Costs against territory or county.
17. Costs on appeal in special pleading.
18 & 19. Costs, when in discretion of court
20. Costs may be retaxed on application.
21. When security for costs may be required by defendant.
22. Affidavit by sureties on undertaking.
23. Time this act takes effect.

SEC. 1. The measure and mode of compensation of attorneys and counsellors shall be left to the agreement, express or implied, of the parties; but there may be allowed to the prevailing party upon the judgment, certain sums by way of indemnity for his expenses in the action, which allowances are termed costs. Allowance, when termed costs. 5 How 339; 3 Sanf. 696, 762

When allowed of course to plaintiff. 8 Barb. 567.

SEC. 2. Costs shall be allowed, of course, to the plaintiff upon a judgment in his favor, in the following cases:

1. In an action for the recovery of real property, or when a claim of title to real property arises on the pleadings, or is certified by the court to have come in question at the trial;

2. In an action to recover the possession of personal property, when the value of the property amounts to fifty dollars or more; such value shall be determined by the jury, court or referee by whom the action is tried;

3. In an action for the recovery of money or damages, when the plaintiff shall recover fifty dollars or more;

4. In the actions of which a justice of the peace has not jurisdiction; but in an action for assault, battery, false imprisonment, libel, slander, malicious prosecution, criminal conversation, or seduction, in which a justice of the peace has not jurisdiction, if the plaintiff recover less than fifty dollars damages, he shall recover no more costs than damages.

Costs, when several actions are brought on one contract, &c.,

SEC. 3. When several actions are brought on one bond, undertaking, promissory note, bill of exchange, or other instrument in writing, or in any other case for the same cause of action, against several parties who might have been joined as defendants in the same action, no costs shall be allowed to the plaintiff in more than one of such actions, which may be at his election, if the parties proceeded against in the other actions were, at the commencement of the previous action, openly within this territory; but the disbursements of the plaintiff shall be allowed in each action.

Costs, when allowed defendant. 2 Sanf. 622, 670.

SEC. 4. Costs shall be allowed, of course, to the defendant in the actions mentioned in the second section, unless the plaintiff be entitled to costs therein.

When allowed to one or more of several defendants.

SEC. 5. In all actions where there are several defendants not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the court may award costs to such of the defendants as have judgment in their favor, or any of them.

Amount of costs allowed to either party.

SEC. 6. When allowed to either party, costs shall be as follows:

1. In all actions settled before issue is joined, five dollars;

2. In all actions when judgment is rendered without a jury, ten dollars;

3. In all actions when judgment is rendered after impanneling a jury, fifteen dollars;

4. In all actions removed to the Supreme Court, and settled before argument, ten dollars;

5. In all actions when judgment is rendered in the Supreme Court, after argument, fifteen dollars.

Disbursements in addition to costs.

SEC. 7. The prevailing party, in addition to the allowances for costs, as provided in the last section, shall also be allowed for all necessary disbursements, including the fees of officers allowed by law, the fees of witnesses, the necessary expenses of taking depositions by commission or otherwise, the compensation of referees, and the expense of printing the papers upon an appeal. The disbursements shall be stated in detail, and verified by affidavit, which shall be filed with the clerk of the court.

Referee's fees

SEC. 8. The fees of referees shall be four dollars to each for every day spent in the business of the reference, but the parties may agree in writing upon any other rate of compensation, and thereupon such rate shall be allowed.

Cost on postponement of trial.

SEC. 9. When an application shall be made to a court or referees to postpone a trial, the payment to the adverse party of a sum not exceeding ten dollars, besides the fees of witnesses, may be imposed as the condition of granting the postponement.

Costs not allowed after tender.

SEC. 10. When, in an action for the recovery of money only, the defendant alleges in his answer that, before the commencement of the action, he tendered to the plaintiff the full amount to which he was entitled, in such specie as by agreement ought to be tendered, and thereupon brings into court for the plaintiff, if in money, the amount so tendered, and the allegation be found true, the plaintiff shall not recover costs, but shall pay them to the defendant.

Plaintiff, when to pay costs from time of deposit.

SEC. 11. If the defendant in any action pending, shall at any time deposit with the clerk of the court, for the plaintiff, the amount which he admits to be due, together with all costs that have accrued, and notify the plaintiff thereof, and such plaintiff shall refuse to accept the same in discharge of the action, and shall not afterwards recover a larger amount than that deposited with the clerk, exclusive of interest and cost, he shall pay all costs that may accrue from the time such money was so deposited.

Appellant, from decision of justice when to pay costs.

SEC. 12. In all civil actions tried before a justice of the peace, in which an appeal shall be taken to the District Court, and the party appellant shall not recover a more favorable judgment in the District Court, than before the justice of the peace, such appellant shall pay all costs accruing after the appeal.

Guardian, when responsible

SEC. 13. When costs are adjudged against an infant plaintiff, the guardian by whom he appeared in the action shall be responsible therefor, and payment thereof may be enforced by attachment.

Costs, by and against executors, &c.

SEC. 14. In an action prosecuted or defended by an executor, administrator, trustee of an express trust, or a person expressly authorized by statute, costs shall be recovered, as in an action by or against a person prosecuting or defending in his own right, but such costs shall be chargeable only upon, or collected off the estate, fund or party represented, unless the court shall direct the same to be paid by the plaintiff or defendant personally, for mismanagement or bad faith in such action or defence.

Against assignee.

SEC. 15. When the cause of action after the commencement of the action by assignment, or in any other manner, becomes the property of a person not a party thereto, and the prosecution or defence is thereafter continued, such person shall be liable for the costs, in the same manner as if he were a party, and payment thereof may be enforced by attachment.

Against territory or county

SEC. 16. In all actions prosecuted in the name, and for the use of the territory, or in the name and for the use of any county, the territory or county shall be liable for costs, in the same cases and to the same extent as private parties.

On appeal in a special proceeding.

SEC. 17. When the decision of a court of inferior jurisdiction in an action of special proceeding, is brought before the Supreme Court or a district court, for review, such proceedings shall, for purposes of costs, be deemed an action at issue upon a question of law, from the time the same is brought into the Supreme Court or district court, and costs thereon may be awarded and collected in such manner as the court shall direct, according to the nature of the case.

When in discretion of court.

SEC. 18. In the following cases the costs of an appeal to the Supreme Court, shall be in the discretion of the court:

1. When a new trial shall be ordered;

2. When a judgment shall be affirmed in part and reversed in part.

Ib.; apportionment of costs.

SEC. 19. In all other actions and proceedings than those mentioned in this chapter, where no provision is made for the recovery of costs, they may be allowed or not, and if allowed, may be apportioned between the parties, in the discretion of the court.

Costs may be re-taxed on application.

SEC. 20. Any party aggrieved by the taxation of costs by the clerk of the court, may, upon application, have the same retaxed by the court in which the action or proceeding is had.

When security for costs may be required by defendant.

SEC. 21. When the plaintiff in an action resides out of the territory, or is a foreign corporation, security for the costs and charges which may be awarded againt such plaintiff, may be required by the defendant. When required, all proceedings in the action shall be stayed until an undertaking, executed by two or more persons, be filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action, not exceeding the sum of two hundred dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking be executed and filed.

7 Wen. 485.

Affidavit by sureties, &c.

SEC. 22. Each of the sureties on the undertaking mentioned in the last section, shall annex to the same an affidavit that he is a resident of the county, and worth double the amount specified in the undertaking, over and above all his just debts and liabilities, exclusive of property exempt from execution. The plaintiff may deposit with the clerk the sum of two hundred dollars in lieu of an undertaking as required by the last section.

When this act takes effect.

SEC. 23. This act shall take effect, and be in force from and after the first day of May next.

*Passed Jan. 7th*, 1854.

# *AN ACT* TO REGULATE ACTIONS RELATING TO REAL PROPERTY.

## CHAPTER I.

## ACTIONS TO RECOVER THE POSSESSION OF REAL PROPERTY.

TITLE I. *Of Actions to Recover the Possession of Real Property.*
TITLE II. *Of Actions for Nuisances, Waste and Trespasses on Real Property.*

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### TITLE I.

### *Of Actions to Recover the Possession of Real Property.*

SEC. 1. Who may be plaintiffs for the recovery of real property.
2 Substitution of landlord for tenant
3. Proceedings against a non-resident.
4. Complaint, what to contain
5. Answer, what to contain.
6 Judgment against tenant, when conclusive against landlord.
7 When plaintiff entitled to damages.
8. Judgment when plaintiff's right of property expires before trial.
9. When improvements may be set off against damages.
10. Order to survey property.
11. Order, what to contain.
12 Alienations by defendant not to prejudice action.
13 Mortgage not conveyance
14. Stay of proceedings on payment of rent, &c., by tenant.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action, which may be brought against any person acting as owner, landlord or tenant of the property claimed.

Who may be plaintiffs for the recovery of real property. 5 Denio, 121, 477, 3 Barb 555

SEC. 2. Whenever it appears that the defendant is only a tenant, the landlord may be substituted after ten days' notice to him that such action is pending, or upon such further notice as the court or judge thereof may think proper.

Substitution of landlord for tenant.

SEC. 3. When the defendant is a non-resident, service of the summons may be made upon his agent for the property, residing in this territory, with the like effect as though made upon the principal, or service may be made by publication as in other cases.

Proceedings against a non-resident

SEC. 4. The plaintiff, in his complaint, shall state that he is entitled to the possession of the property, particularly describing it; the interest he claims therein; and that the defendant unlawfully keeps him out of the possession, and the damages, if any, which he claims for withholding the property.

Complaint.

SEC. 5. The answer of the defendant shall set forth under what claim of right, if any, he holds possession, and if as tenant, the name and residence of his landlord shall be given, and if he does not defend for the whole of the property, he shall specify for what particular part he does defend.

Answer.

SEC. 6. In an action against a tenant, the judgment shall be conclusive against a landlord who has received notice as hereinbefore provided.

Judgment against tenant.

Damages to plaintiff.

SEC. 7. If the plaintiff prevail in an action for the recovery of real property, he shall also, in the same action, be entitled to recover damages for withholding the property.

When plaintiff's right of property expires before trial.

SEC. 8. If the right of the plaintiff to the possession of the property expire after the commencement of the action, and before the trial, the verdict shall be returned according to the fact, and judgment shall be entered only for the damages and costs.

Set-off of improvements.

SEC. 9. When damages are claimed for withholding the property recovered, upon which permanent improvements have been made by the defendant, or those under whom he claims, holding under color of title adversely to the claims of the plaintiff, in good faith, the value of such improvements shall be allowed as a set-off against such damages.

Order to survey.

SEC. 10. The court or judge thereof, on motion, and after notice to the opposite party, may, for cause shown, grant an order allowing the party applying therefor to enter upon the property in controversy, and make survey and admeasurement thereof, for the purposes of the action.

SEC. 11. The order shall describe the property, and a copy thereof shall be served upon the owner or occupant, and thereupon the party may enter upon the property, and make such survey and admeasurement, but if any unnecessary injury be done to the premises, he shall be liable therefor.

SEC. 12. An action for the recovery of real property against a person in possession, cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action.

Alienations not to prejudice.

SEC. 13. A mortgage of real property shall not be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law.

Stay of proceedings on payment of rent, &c.

SEC. 14. When in case of a lease of real property, and the failure of the tenant to pay rent, the landlord has a right to re-enter for such failure, he may bring an action to recover possession of the property, but if, at any time before judgment in such action, the lessee or his successor in interest pay to the plaintiff, or bring into court, the amount of rent then in arrear, with interest, and the costs of the action, and perform the other covenants or agreements on the part of the lessee, he shall be entitled to the possession, according to the terms of the lease.

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## TITLE II.

### *Actions for Nuisances, Waste and Trespasses on Real Property.*

SEC. 15. Actions for nuisance, by whom brought.
16. Triple damages when, in certain cases of waste.
17. Triple damages in certain cases of trespass
18. Exceptions of certain cases.
19. Liability of tenant in possession to purchaser on execution.

Action for nuisance.

SEC. 15. Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance, and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance, and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Triple damages in certain cases of waste.

SEC. 16. If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit waste thereon, any person injured by the waste may bring an action against him therefor, in which action there may be judgment for treble damages.

Ib, in certain cases of trespass. 8 J. R. 344; 8 Cow 115; 2 Wen 247; 4 Denio, 422.

SEC. 17. Every person who shall wilfully cut down, girdle, or otherwise injure any tree, timber or shrub on the land of another person, or in the street or highway in front of any person's house, village or city lot, or cultivated grounds, or on the commons or public grounds of any city or town, or on the street or highway thereof, without lawful authority, shall be liable to the owner of such land, or to such city or town, for treble the amount of damages which may be assessed therefor, in an action in any court having jurisdiction.

Exception of certain cases.

SEC. 18. If, upon the trial of such action, it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service, or by whose direction, the act was done, or that such tree or timber was taken for the purpose of making or repairing any public highway or bridge, judgment shall be given for only the single damages assessed in the action.

Liability of tenant in possession to purchaser on execution.

SEC. 19. When real property shall have been sold on execution, the purchaser thereof, or any person who may have succeeded to his interest, may, after his estate becomes absolute, recover damages for injury to the property by the tenant in possession after the sale, and before possession is delivered under the conveyance.

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# CHAPTER II.

## ACTIONS FOR THE PARTITION OF REAL PROPERTY.

SEC 1. Who may apply for partition and to what court
2. Complaint, what to contain.
3. Persons having liens, when to be parties.
4. Summons, how directed.
5. Publication of summons to unknown or absent parties.
6. Answer of defendant, what to contain.
7. Rights of the several parties in issue ascertainment of title in case of sale.
8. Plaintiff to produce certificate of recorder, and clerk of District Court.
9. Persons having liens, &c, to be made parties.
10. Service of notice on persons holding liens, not parties.
11. Order of sale, when made, when partition ordered.
12. Oath of referees to be filed.
13 Partition, how made.
14 Report of referees.

CHAP. 2.

SEC. 15. Setting aside report, &c. Judgment on report.
16. Persons and cases not affected.
17. Expenses of referees.
18. Liens on an undivided interest, how assigned.
19. Set-off of estate for life, &c., in case of partial sale.
20. Proceeds of incumbered property, how applied.
21. Marshalling securities of lien creditors.
22. Proceeds of sale, how distributed.
23. Proceeds if paid into court, action to continue.
24. Sale by referees, how made.
25. Sale may be on credit.
26. Mortgages, &c, how to be taken.
27. Estate for life or years, how disposed of.
28. Compensation to tenant in case of sale
29. Investment when no consent is given.
30 Rights of unknown tenants, how protected.
31. Contingent and future rights, how provided for.
32. Terms of sale to be made known.
33. Referees not to purchase.
34. Referees to report sale.
35. Order to convey.
36. Receipt of incumbrancer, &c., to referees.
37. Conveyances when recorded, a bar to, &c.
38. Proceeds of sale for unknown non-residents, when invested.
39. Security for proceeds, &c., how taken.
40. Security, to be taken in the name of parties and filed with clerk.
41. Clerk to collect interest on securities, &c.
42. Partition made equal, by compensation.
43. Proceeds when paid guardian of infant.
44. Shares of insane, &c, person.
45. Consent to partition by guardian.
46. Costs of partition, how allowed.
47. When court may appoint one referee.]
48. This act, when to take effect.

Who may apply, and to what courts 2 Paige, 387; 3 do 245; 4 J Ch. 271, 19 Wen 367, 5 Denio, 385, 2 Barb. 599; 3 do 576; 3 Cow. 363.

SEC. 1. When several persons hold and are in possession of real property as joint tenants, or tenants in common, in which one or more of them have an estate of inheritance, or for life or years, an action may be brought by one or more of such persons, in the District Court of the proper county, for a partition thereof according to the respective rights of the persons interested therein, and for a sale of such property or a part of it, if it appear that a partition cannot be made without great prejudice to the owners.

Complaint, what to contain.

SEC. 2. The interest of all persons in the property, whether such persons be known or unknown, shall be set forth in the complaint, specifically and particularly as far as known to the plaintiff, and if one or more of the parties, or the share or quantity of interest of any of the parties, be unknown to the plaintiff, or be uncertain, or contingent, or the ownership of the inheritance depend upon an executory devise, or the remainder be a contingent remainder, so that such parties cannot be named, that fact shall be set forth in the complaint.

Persons having liens, when to be parties.

SEC. 3. No persons who have or claim any liens upon the property, by mortgage, judgment or otherwise, need be made parties to the action, unless such liens be matters of record.

Summons, how directed 11 Wen 647; 17 do 488; 1 do. 267.

SEC. 4. The summons shall be directed to all the joint tenants and tenants in common, and all persons having any liens of record, by mortgage, judgment or otherwise, upon the property or upon any particular portion thereof, and generally to all persons unknown, who have or claimed any interest in the property.

Publication of summons.

SEC. 5. If a party having a share or interest be unknown, or any of the known parties reside out of the territory, or cannot be found therein, and such fact is made to appear by affidavit, the summons may be served on such unknown or absent party, by publication as in other cases. When publication is made, the summons, as published, shall be accompanied by a brief description of the property; which is the subject of the action.

Answer of defendants.

SEC. 6. The defendants shall set forth in their answers, fully and particularly, the nature and extent of their interest in the property, and if such defendants claim a lien upon the property by mortgage, judgment or otherwise, they shall state the date of the same, and the amount remaining due thereon, and whether the amount has been secured in any other way or not, and if so secured, the nature and extent of the security, or they shall be deemed to have waived their rights to such lien.

Right of the parties in issue.

SEC. 7. The rights of the several parties, plaintiffs as well as defendants, may be put in issue, tried and determined by such action, and where a sale of the premises is necessary, the title shall be ascertained by proof to the satisfaction of the court, before the judgment of sale shall be made, and when service of the complaint shall have been made by publication, like proof shall be required of the rights of the absent or unknown parties, before such judgment shall be rendered, except that when there are several unknown persons having an interest in the property, their rights may be considered together in the action, and not as between themselves.

Certificate of recorder.

SEC. 8. The plaintiff shall produce to the court, on the hearing of the case, the certificates of the recorder and the clerk of the District Court where the propetry is situated, showing whether there were or were not any liens of record upon the property or any part thereof, at the time of the commencement of the action.

Persons having lien to be made parties.

SEC. 9. If it appear by the certificate of the recorder or the clerk, that there were liens of record at the time of the commencement of the action, and the persons holding or claiming such liens, be not made parties to the action, the court shall either order such parties to be brought in by an amendment or supplemental complaint, or appoint a referee to ascertain whether their liens have been paid, or if not paid what amount remains due, and the date of their liens, and whether the amount remaining due thereon has been secured in any way, and if secured, the nature and extent of the security.

Ib , Service of notice

SEC. 10. The plaintiff shall cause a notice to be served a reasonable time previous to the day for appearance before the referee appointed, as provided in the last section, on each person having liens of record, who is not a party to the action, to appear before the referee at a specified time and place, to make proof by his own affidavit or otherwise of the true amount due, or to become due contingently or absolutely thereon. In case such person be absent, or his residence be unknown, service may be made by publication or notice to his agents, under the direction of the court or judge thereof, in such manner as may be proper. The report of the referee thereon shall be made to the court; and shall be confirmed, modified or set aside, and a new reference ordered, as the justice of the case may require.

Order of sale. 19 Wen 226

SEC. 11. If it be alleged in the complaint and established by evidence, or if it appear by the evidence without such allegation in the complaint, to the satisfaction of the court, that the property or any part of it, is so situated that partition cannot be made without great prejudice to the owners, the court may order a sale thereof, and for that purpose may appoint one or more referees. Otherwise, upon the requisite proofs being made, it shall order a partition according to the respective rights of the parties as ascertained by the court, and appoint three referees therefor, and shall designate the portion to remain undivided, for the owners whose interests remain unknown or not ascertained.

Oath of referees.

SEC. 12. The referees, before proceeding to the discharge of their duties, shall be sworn or affirmed before some officer competent to administer oaths, honestly and impartially to execute the trust reposed in them, which oath or affirmation shall be filed with the clerk of the court.

Partition.

SEC. 13. In making the partition, the referees shall divide the property and allot the several portions thereof to the respective parties, quality and quantity relatively considered, according to the respective rights of the parties as determined by the court, designating the several portions by proper land marks, and may employ a surveyor with the necessary assistants to aid them therein.

Report of referees.

SEC. 14. The referees or a majority of them shall make a report of their proceedings, specifying therein the manner of executing their trust, describing the property divided and the shares allotted to each party, with a particular description of each share.

Setting aside report, &c. Judgment on report. 11 Wen 647; 1 Hill. 141; 2 do 625.

SEC. 15. The court may confirm or set aside the report, and if necessary appoint new referees. Upon the report being confirmed, judgment shall be rendered that such partition be effectual forever, which judgment shall be binding and conclusive:

1. On all parties named therein, and their legal representatives who have at the time any interest in the property divided, or any part thereof, as owners in fee, or as tenants for life or for years, or as entitled to the reversion, remainder, or the inheritance of such property or any part thereof, after the termination of a particular estate therein, and who, by any contingency, may be entitled to a beneficial interest in the property, or who have an interest in any undivided share thereof, as tenants for years or for life;

2. On all persons interested in the property, who may be unknown, to whom notice shall have been given of the application for partition by publication, as directed by section five; and

3. On all other persons claiming from such parties or persons, or either of them.

Persons and cases not affected. 1 Barb. 560.

SEC. 16. But such judgment and partition shall not affect any tenants for years or for life to the whole of the property which is the subject of partition; nor shall such judgment and partition preclude any person, except such as are specified in the last section, from claiming title to the property in question, or from controverting the title of the parties between whom the partition shall have been made.

Expenses of referees.

SEC. 17. The expenses of the referees, including those of a surveyor and his assistants, when employed, shall be ascertained and allowed by the court, and the amount thereof, together with the fees allowed by law to the referees, shall be paid by the plaintiff, and may be allowed as part of the charges.

Lien on an undivided interest.

SEC. 18. When a lien is on an undivided interest or estate of any of the parties, such lien, if a partition be made, shall thereafter be a charge only on the share assigned to such party; but such share shall be first charged with its just proportion of the costs of the partition in preference to such lien.

Set-off of estate for life, &c., in case of partial sale

SEC. 19. When a part of the property only is ordered to be sold, if there be an estate for life or years, in an undivided share of the whole property, such estate may be set off in any part of the property not ordered to be sold.

Proceeds of incumbered property how applied.

SEC. 20. The proceeds of the sale of the incumbered property, shall be applied under the direction of the court, as follows:

1. To pay its just proportion of the general costs of the action:
2. To pay the costs of the reference;
3. To satisfy and cancel of record the several liens in their order of priority, by payment of the sums due, and to become due; the amount remaing due to be verified by affidavit at the time of payment:
4. The residue among the owners of the property sold, according to their respective shares.

Marshalling securities.

SEC. 21. Whenever any party to the action, who holds a lien upon the property or any part thereof, has other securities for the payment of the amount of such lien, the court may, in its discretion, order such securities to be exhausted before a distribution of the proceeds of sale, or may order a just deduction to be made from the amount of the lien on the property, on account thereof.

Proceeds of sale, &c. how distributed.

SEC. 22. The proceeds of sale, and the securities taken by the referees on any part thereof, shall be distributed by them to the persons entitled thereto, whenever the court so directs. But if no direction be given, all such proceeds and securities shall be paid into court, or deposited therein, or as directed by the court.

Ib.; if paid into court, action to continue

SEC. 23. When the proceeds of sales of any shares or parcel belonging to persons who are parties to the action, and who are known, are paid into court, the action may be continued as between such parties, for the determination of their respective claims thereto, which shall be ascertained and adjudged by the court. Further testimony may be taken in court, or by a referee at the discretion of the court; and the court may, if necessary, require such parties to present the facts or law in controversy, by pleadings as in original actions.

Sale how made.

SEC. 24. All sales of real property made by referees under this chapter, shall be made by public auction, to the highest bidder, upon notice published in the manner required for the sale of real property on execution. The notice shall state the terms of sale, and if the property, or any part of it, is to be sold, subject to a prior estate, charge or lien, that shall be stated in the notice.

Sale may be on credit.

SEC. 25. The court shall, in the order of sale, direct the terms of credit which may be allowed for the purchase-money of any portion of the premises, of which it may direct a sale on credit; and for that portion of which the purchase-money is required by the provisions hereinafter contained, to be invested for the benefit of unknown owners, infants, or parties out of the territory.

Mortgages, &c., how to be taken.

SEC. 26. The referees may take separate mortgages, and other securities for the whole, or convenient portions of the purchase-money, on such parts of the property as are directed by the court to be sold on credit, in the name of the clerk of the District Court, and his successor in office; and for the shares of any known owner of full age, in the name of such owner; and for the shares of an infant, in the name of the guardian of such infant.

Estate of tenant, how disposed of.

SEC. 27. When the estate of any tenant for life or years, in any undivided part of the property in question, shall have been admitted by the parties, or ascertained by the court to be existing at the time of the order of sale, and the person entitled to such estate shall have been made a party to the action, such estate may be first set off out of any part of the property, and a sale made of such parcel, subject to the prior unsold estate of such tenant therein; but if, in the judgment of the court, a due regard to the interest of all the parties require that such estate be also sold, the sale may be so ordered.

Compensation to tenant in case of sale.

SEC. 28. Any person entitled to an estate for life or years, in any undivided part of the property, whose estate shall have been sold, shall be entitled to receive such sum in gross as may be deemed, upon principles of law applicable to annuities, a reasonable satisfaction for such estate, and which the person so entitled shall consent to accept instead thereof, by an instrument in writing, filed with the clerk of the court. Upon the filing of such consent, the clerk shall enter the same in the minutes of the court.

Investments if no consent given.

SEC. 26. If such consent be not given, filed and entered, as provided in the last section, before the report of sale by the referees, the court shall ascertain and determine what proportion of the proceeds of the sale, after deducting expenses, will be a just and reasonable sum to be invested for the benefit of the person entitled to such estate for life or years, and shall order the same to be paid to such party or deposited in court for him, as the case may require.

Rights of unknown tenants.

SEC. 30. If the persons entitled to such estate for life or years be unknown, the court shall provide for the protection of their rights, in the same manner, as far as may be, as if they were known and had appeared.

Contingent and future rights, how provided for.

SEC. 31. In all cases of sales in partition, when it shall appear that any person has a vested or contingent future right or estate in any part of the property sold, the court shall ascertain and settle the proportional value of such contingent or vested right or estate, according to the principles of law applicable to annuities and survivorship and shall direct such proportion of the proceeds of sale to be invested, secured, or paid over, in such manner as to protect the rights and interests of the parties.

Terms of sales to be made known

SEC. 32. In all cases of sales of property, the terms shall be made known at the time; and if the premises consist of distinct farms or lots, they shall be sold separately.

Referees not to purchase.

SEC. 33. Neither of the referees, nor any person for the benefit of either of them, shall be interested in any purchase; nor shall the guardian of an infant party be interested in the purchase of any real property, being the subject of the action, except for the benefit of the infant. All sales contrary to the provisions of this section shall be void.

Report of sale.

SEC. 34. After completing a sale of the property, or any part thereof ordered to be sold, the referees shall report the same to the court, with a description of the different parcels of land sold to each purchaser, the name of the purchaser, the price paid or secured, the terms and conditions of the sale, and the securities, if any, taken. The report shall be filed in the office of the clerk of the District Court, in the county where the property is situated.

Order to convey.

SEC. 35. If the sale be confirmed by the court, an order shall be entered, directing the referees to execute conveyances and take securities pursuant to such sale, which they are hereby authorized to do. Such order may also give directions to them respecting the disposition of the proceeds of the sale.

Receipt of incumbrancer.

SEC. 36. When a party entitled to a share of the property, or an incumbrancer entitled to have his lien paid out of the sale, becomes a purchaser, the referees may take his receipt for so much of the proceeds of the sale as belongs to him.

Conveyance recorded, a bar to, &c.

SEC. 37. The conveyances shall be recorded in the county where the premises are situated, and shall be a bar against all persons interested in the property in any way, who shall have been named as parties in the action, and against all such parties and persons as were unknown, if the summons have been served by publication, and against all persons claiming from them or either of them.

Proceeds of sale invested.

SEC. 38. When there are proceeds of a sale belonging to an unknown owner, or to a person without the territory, who has no legal representative within it, the same shall be invested in securities on interest, for the benefit of the persons entitled thereto.

Security for proceeds, how taken.

SEC. 39. When the security for the proceeds of sale is taken, or when an investment of any such proceeds is made, it shall be done, except as herein otherwise provided, in the name of the clerk of the District Court of the county where the papers are filed, and his successors in office, who shall hold the same for the use and benefit of the parties interested, subject to the order of the court

Security to be in name of parties, and filed.

SEC. 40. When security is taken by the referees on a sale, and the parties interested in such security by an instrument in writing under their hands, delivered to the referees, agree upon the shares and proportions to which they are respectively entitled; or when shares and proportions have been previously adjudged by the court, such securities shall be taken in the names of, and payable to the parties respectively entitled thereto; and shall be delivered to such parties upon their receipt therefor. Such agreement and receipt shall be returned and filed with the clerk.

Clerk to collect interest.

SEC. 41. The clerk, in whose name a security is taken, or by whom an investment is made, and his successors in office, shall receive the interest and principal as it becomes due, and apply and invest the same as the court may direct; and shall file in his office all securities taken, and keep an account in a book provided and kept for that purpose in the clerk's office, free for inspection by all persons, of investments and moneys received by him thereon, and the disposition thereof.

Partition made equal by compensation.

SEC. 42. When it appears that partition cannot be made equal between the parties, according to their respective rights, without prejudice to the rights and interests of some of them, the court may adjudge compensation to be made by one party to another, on account of the inequality of partition; but such compensation shall not be required to be made to others by owners unknown, nor by infants, unless in case of an infant it appear that he has personal property sufficient for that purpose, and that his interest will be promoted thereby.

Infants' shares

SEC. 43. When the share of an infant is sold, the proceeds of the sale may be paid by the referees making the sale to his general guardian, or the special guardian appointed for him in the action, upon giving the security required by law, or directed by order of the court.

Shares of insane persons.

SEC. 44. The guardian who may be entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, whose interest in real property shall have been sold, may receive, in behalf of such person, his share of the proceeds of such real property from the referees, on executing, with sufficient sureties, an undertaking, approved by a judge of the District Court, that he will faithfully discharge the trust reposed in him, and will render a true and just account to the person entitled, or to his legal representative.

Consent to partition, by guardian.

SEC. 45. The general guardian of an infant, and the guardian entitled to the custody and management of the estate of an insane person, or other person adjudged incapable of conducting his own affairs, who is interested in real estate held in joint tenancy, or in common, or in any other manner, so as to authorize his being made a party to an action for the partition thereof, may consent to a partition without action, and agree upon the share to be set off to such infant or other person entitled, and may execute a release in his behalf to the owners of the shares of the parts to which they may respectively be entitled, upon an order of the court.

Costs of partition, how allowed.

SEC. 46. The costs of partition, including fees of referees and other disbursements, shall be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment. In that case they shall be a lien on the several shares, and the judgment may be enforced by execution against such shares, and against other property held by the respective parties. When, however, a litigation arises between some of the parties only, the court may require the expense of such litigation to be paid by the parties thereto, or any of them.

When court may appoint one referee.

SEC. 47. The court, with the consent of the parties, may appoint a single referee, instead of three referees, in the proceedings under the provisions of this chapter; and the single referee, when thus appointed, shall have all the powers, and perform all the duties required of the three referees.

SEC. 48. This act shall take effect and be in force from and after the first day of May next.

*Passed December 22d*, 1853.

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## *AN ACT* REGULATING PROCEEDINGS TO VACATE CHARTERS AND LETTERS PATENT, AND TO PREVENT THE USURPATION OF AN OFFICE OR FRANCHISE.

## CHAPTER I.

### ACTIONS IN PLACE OF SCIRE FACIAS, QUO WARRANTO, AND OF INFORMATIONS IN THE NATURE OF QUO WARRANTO.

SEC. 1. *Scire facias* and *quo warranto* abolished.
2 Action by prosecuting attorney to vacate charter
3. Action to annul a corporation.
4 Leave, how obtained.
5. Action upon information or complaint.
6 Action to vacate letters patent.
7. Relator, when to be joined as plaintiff
8. Complaint and action for usurping office.
9 Judgment in such action,
10. Assumption of office, &c., by relator.
11. Damages, how recovered.
12 Action against several persons claiming office.
13. Penalty for usurping office
14 Judgment of forfeiture against a corporation.
15. Costs against corporation.
16 Appointment of a receiver.
17. Copy of judgment roll where to be filed.
18. Act, when to take effect.

Scire facias and quo warranto abolished.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto* are abolished, and the remedies heretofore obtainable in those forms, may be obtained by actions at law under the provisions of this chapter.

Action to vacate a charter.

SEC. 2. An action may be brought into the District Court by the prosecuting attorney of the district, in the name of the territory, whenever the Legislative Assembly shall so direct, against a corporation, for the purpose of vacating or annulling the act of incorporation, or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion, or concealment of a material fact, by the persons incorporated or some of them, or with their knowledge and consent.

Action to annul a corporation. 23 Wen. 204, 228.

SEC. 3. An action may be brought by such prosecuting attorney, in the name of the territory, on leave granted by the District Court or a judge thereof, for the purpose of vacating the charter or annulling the existence of a corporation other than municipal, whenever such corporation shall:

1. Offend against any of the provisions of the act or acts creating, altering or renewing such corporation; or

2. Violate the provisions of any law by which such corporation shall have forfeited its charter by abuse of its powers; or

3. Whenever it shall have forfeited its privileges or franchises by failure to exercise its powers; or

4. Whenever it shall have done or omitted any act which amounts to a surrender of its corporate rights, privileges and franchises; or

5. Whenever it shall exercise a franchise or privilege not conferred upon it by law. And it shall be the duty of such prosecuting attorney, whenever he shall have reason to believe that any of these acts or omissions can be established by proof, to apply for leave, and upon leave granted, to bring the action in every case of public interest, and also in every other case, in which satisfactory security shall be given to indemnify the territory against the costs and expenses to be incurred thereby.

Leave how obtained.

SEC. 4. Leave to bring the action may be granted upon the application of the prosecuting attorney; and the District Court or judge may, in their discretion, direct notice of such application to be given to the corporation or its officers, previous to granting such leave, and may hear the corporation in opposition thereto.

Action upon information or complaint 16 Wen. 656, 20 do. 13, 21 do. 285; 23 do. 193, 223; 550; 2 Barb 518.

SEC. 5. An action may be brought by the prosecuting attorney of the district, in the name of the territory, upon his own information, or upon the complaint of a private party against the party offending, in the following cases:

1. When any person shall usurp, intrude into, or unlawfully hold, or exercise any public office, civil or military, or any franchise within this territory, or any office in a corporation created by the authority of this territory; or

2. When any public officer, civil or military, has done or suffered an act, which, by the provisions of the law, makes a forfeiture of his office; or

3. When any association or number of persons act within this territory as a corporation, without being duly incorporated. And it shall be the duty of the prosecuting attorney to bring the action, whenever he shall have reason to believe that any of these acts can be proven, or when he shall have been directed to do so by a judge of the District Court.

Action to vacate letters patent.

SEC. 6. An action may be brought by the prosecuting attorney of the district, in the name of the territory, for the purpose of vacating or annulling letters patent, granted by the territory, in the following cases:

1. When he shall have reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by a person to whom the same were issued or made, or with his consent or knowledge; or

2. When he shall have reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or

3. When he shall have reason to believe that the patentee, or those claiming under him, have done, or omitted, an act in violation of the terms and conditions on which the letters patent were granted, or have, by any other means, forfeited the interest acquired under the same.

Relator, when to be joined.

SEC. 7. When an action shall be brought by the prosecuting attorney, by virtue of this chapter, on the relation or information of a person having an interest in the question, the name of such person shall be joined with the territory as plaintiff.

Complaint and action for usurping office.

SEC. 8. Whenever such action shall be brought against a person for usurping an office, the prosecuting attorney, in addition to the statement of the cause of action, may also set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto, and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to the office, and by means of his usurpation thereof, an order may be granted by a judge of the District Court, for the arrest of such defendant and holding him to bail, and thereupon he shall be arrested and held to bail in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other actions at law where the defendant is subject to arrest.

Judgment in such action.

SEC. 9. In every such case judgment shall be rendered upon the right of the defendant, and also, upon the right of the party so alleged to be entitled, or only upon the right of the defendant, as justice shall require.

Assumption of office, &c., by relator

SEC. 10. If judgment shall be rendered upon the right of the person so alleged to be entitled, in favor of such person, he shall be entitled, after taking the oath of office, and executing such official bond as may be required by law, to take upon himself the execution of the office.

Damages how recovered.

SEC. 11. If judgment be rendered upon the right of the person so alleged to be entitled, in favor of such person, he may recover by action the damages which he may have sustained by reason of the usurpation of the office by the defendant.

Action against several persons claiming office

SEC. 12. When several persons claim to be entitled to the same office or franchise, an action may be brought against all such persons, in order to try their respective rights to such office or franchise.

Penalty for usurping office.

SEC. 13. When a defendant, whether a natural person or a corporation, against whom such action shall have been brought, shall be adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that such defendant be excluded from such office, franchise or privilege, and also that the plaintiff recover costs against such defendant. The court may also, in its discretion, fine such defendant a sum not exceeding one thousand dollars, which fine, when collected, shall be paid into the territorial treasury.

Judgment of forfeiture

SEC. 14. If it shall be adjudged that a corporation, against which an action shall have been brought, pursuant to this chapter, has, by neglect, abuse, or surrender, forfeited its corporate rights, privileges against a corporation. and franchises, judgment shall be rendered that the corporation be excluded from such corporate rights, privileges and franchises, and that the corporation be dissolved.

Costs against corporation. SEC. 15. If judgment be rendered in such action against a corporation, or against persons claiming to be a corporation, the court may cause the costs therein to be collected, by execution, against the persons claiming to be a corporation, or by attachment or process against the directors or other officers of such corporation.

Appointment of receiver. SEC. 16. When such judgment shall be rendered against a corporation, the court shall have the same power to restrain the corporation, to appoint a receiver of its property, and take an account, and make distribution thereof among its creditors, as a court of chancery possesses, and it shall be the duty of the prosecuting attorney, immediately after the rendition of such judgment, to institute proceedings for that purpose.

Copy of judgment roll where to be filed. SEC. 17. Upon the rendition of such judgment against a corporation, or for the vacating or annulling of letters patent, it shall be the duty of the prosecuting attorney, to cause a copy of the judgment roll to be forthwith filed in the office of the secretary of the territory.

SEC. 18. This act shall take effect and be in force, from and after the first day of May next.

*Passed December 22d*, 1854.

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## *AN ACT* RELATING TO WRITS OF MANDAMUS AND PROHIBITION.

# CHAPTER I.

## OF THE WRIT OF MANDAMUS.

TITLE I. *Writs of Mandamus.*
TITLE II. *Writs of Prohibition.*

### TITLE I.

### *Writs of Mandamus.*

SEC. 1. Writ of mandamus, to whom issued.
2. When to issue.
3. Nature of mandamus.
4. When peremptory mandamus may be allowed.
5. Proceedings.
6. Answer on return of writ.
7. If no answer, peremptory writ allowed.
8. Pleadings.
9. Issue when tried.
10. Issue where tried.
11. Trial, as in civil action.
12. Damages for plaintiff.
13. Court may fine or imprison.
14. Jurisdiction of District Court.

To whom to issue. 2 J. Cas. 217. SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the writ of mandamus may be issued to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

SEC. 2. This writ shall only be issued in cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit on the application of the party beneficially interested. When to issue. 1 Barb. 34.

SEC. 3. The writ shall be either alternative or peremptory. The alternative writ shall state concisely the facts, showing the obligation of the party to whom it is directed to perform the act, and his omission to perform it, and command him that immediately after the receipt of the writ, or some other specified time, he do the act required to be performed, or show cause before the court out of which the writ issued, at a specified time and place, why he has not done so, and that he then and there return the writ with his certificate of what he has done. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he has not done as commanded, shall be omitted. Nature of mandamus.

SEC. 4. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance; in all other cases the alternative writ shall be first issued. When peremptory.

SEC. 5. The motion for the writ, the allowance and the service thereof, and the enforcement of obedience thereto, shall be such as the court may direct. Power of court.

SEC. 6. On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served may show cause, by answer under oath, made in the same manner as an answer to a complaint in an action at law. Answer on return of writ.

SEC. 7. If no answer be made, a peremptory mandate shall be allowed against the party on whom the writ shall have been served. If an answer be made containing new matter, the same shall not conclude the applicant, who may, on the trial or other proceedings, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance. If no answer, peremptory writ allowed. 1 Barb 34.

SEC. 8. No other pleading or written allegation shall be allowed than the writ and answer; and these pleadings shall have the same effect, and be construed and amended in the same manner, as proceedings in an action at law; and the issues thereby joined shall be tried, and the further proceedings had, in the same manner as in an action at law. Pleadings

SEC. 9. Issues of fact, joined in the case of a writ of mandamus issued out of the Supreme Court, shall be tried as provided in the next section. Issue, when tried.

Issue, when tried. SEC. 10. When the parties consent thereto, the court may try the issues of fact arising upon the pleadings of the parties, or the same may be referred, as in actions at law in the District Court; but when either party shall refuse to consent to a trial, other than a trial by jury, the Supreme Court may order a jury of twelve men, possessing the qualifications for jurors, in the District Court, to be summoned to appear forthwith before the court to try such issue; and in case any of the jurors so summoned should, for any cause, be rejected, or be disqualified to act as a juror in the case, the court may order others to be summoned, until a jury shall be obtained.

Trial as in civil action. SEC. 11. When a jury shall be impanneled, the same proceedings shall be had as in the trial of an action at law in the District Court.

Damages for plaintiff. SEC. 12. If judgment be given for the applicant, he shall recover the damages which he shall have sustained, to be ascertained by the court or jury, or by referees, as in an action at law, together with his costs and charges: and, for such damages, costs and charges, an execution may be issued; and a peremptory mandamus shall also be awarded without delay.

Court may fine or imprison. SEC. 13. Whenever a peremptory mandamus has been issued and directed to any inferior tribunal, corporation, board or person, commanding the performance of any public duty, specially enjoined by law, if it appear to the court that any member of such inferior tribunal, corporation or board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose on him a fine not exceeding five hundred dollars. Such fine, when collected, shall be paid into the territorial treasury. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned for a period not exceeding three months, and may take any orders necessary and proper, for the complete enforcement of the writ.

Jurisdiction of district courts. SEC. 14. The several district courts of this territory shall have original jurisdiction in cases of mandamus, except in cases when such writ is directed to one of the judges of the District Court, in his official capacity, and the said court shall proceed upon all such cases in the same manner as in an action at law, unless otherwise provided by statute.

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## TITLE II.

### *Writs of Prohibition.*

SEC. 15. Writs of prohibition to be issued from Supreme Court only.
16. Service and return of writ
17. Proceedings upon return of writ
18 Judgments when and how rendered by court.
19 Act when to take effect.

To be issued only from Supreme Court. SEC. 15. Writs of prohibition shall only be issued out of the Supreme Court, and such writs shall be applied for, upon affidavits, by motion to the court or a judge thereof in vacation, in the same manner as writs of mandamus; and if the cause shown shall appear to the court or judge to be sufficient, a writ shall be thereupon issued, which shall command the court and party, or officer to whom it shall be directed, to desist, and refrain from any further proceedings in the suit, or matter specified therein, until the next term of the Supreme Court, or the further order of the court thereon; and to show cause at the next term of the said court, or some day to be named in the same term, at the option of the court, if issued in term time, why they should not be absolutely restrained from any further proceeding in such action or matter.

Service and return.

SEC. 16. Such writ shall be served upon the court and party, or officer to whom it shall be directed, in the same manner as a writ of mandamus; and a return shall in like manner be made thereto by such court or officer, which may be enforced by attachment.

Proceedings on return of writ.

SEC. 17. The court and party, or officer on whom the writ shall have been served, may, by the return or answer under oath, show cause why they should not be restrained as mentioned in the writ of prohibition; and the person prosecuting such writ, may take issue or demur to the matters relied on in the return or answer by such court and party, or officer; and the like proceedings shall be had for the trial of such issues of law or fact, joined between the parties, and for the rendering of judgment thereon as in a mandamus.

Judgment rendered by court. 3 Barb. 146

SEC. 18. The court, after hearing the proofs and allegations of the parties, shall render judgment, either that a prohibition absolute restraining the said court and party or officer from proceeding in such action or matter, do issue, or authorizing the court and party or officer to proceed in such action or matter in question; and may make and enforce such order in relation to costs and charges, and the amount thereof as may be deemed just.

SEC. 19. This act shall take effect and be in force from and after the first day of May next.

*Passed January 5th*, 1854.

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## *AN ACT* RELATING TO ACTIONS ON OFFICIAL SECURITIES FOR FINES AND FORFEITURES, TO ACTIONS BY AND AGAINST PUBLIC OFFICERS AND PUBLIC BODIES.

## CHAPTER I.

### ACTIONS ON OFFICIAL SECURITIES, AND FOR FINES AND FORFEITURES.

SEC. 1. Official bond how construed.
2. Who may bring an action thereon.
3 Leave how granted
4. One judgment not to preclude a second action, on other delinquencies
5. Amount recovered not to exceed undertaking.
6. Execution to be first enforced against principal.
7. Securities, when and how apportioned.
8. Actions for fines and forfeitures, who may prosecute.
9. Amount recovered when penalty is limited
10. Effects of recovery by collusion.
11. Certain fines to be paid into the treasury

Official bond

SECTION 1. *Be it enacted by the Legislative Assembly of the Terri-*

*tory of Oregon*, That the official bond or other security of a public officer to the territory, whether with or without securities, shall be construed as security to the territory, and also to all persons severally for the official delinquencies, against which it is intended to provide. If it be to a county, city, village or other municipal body, it shall, in like manner, be construed severally to all persons intended to be secured, as well as to the body politic named therein.

Who may bring an action thereon. SEC. 2. When a public officer, by official misconduct or neglect of duty shall forfeit his official bond, or render his sureties liable upon an official security, any person injured thereby, or who is by law entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer and his sureties, to recover the amount to which he may be entitled by reason of the delinquency.

Leave, how granted. SEC. 3. Before an action can be brought by the plaintiff, other than the territory or body politic named in the security, leave shall be obtained of the District Court, or a judge thereof, within the district or county where the action is triable; and leave shall only be granted on a production of a copy of the bond, and an affidavit showing the delinquency, and if the delinquency be such as that, if established on the trial, it would entitle the party applying to recover in the action, leave shall be granted.

Second action for other delinquency. SEC. 4. A judgment in favor of a party for one delinquency, shall not preclude the same or another party from an action on the same security for another delinquency.

Recovery against surety limited. SEC. 5. If it appear in an action against a surety in an official security, that he has already been obliged, by reason of prior recoveries against him on the same, to pay amounts which, in the aggregate, are equal to the extent of his undertaking, or that by reason of the insolvency of his principal he will be obliged to pay to that extent on judgments already recovered against the surety, the recovery against a surety shall, in all such cases, be limited by the amount of his undertaking, except as otherwise provided by law.

Officers primarily liable. SEC. 6. Upon the execution issued on a judgment recovered upon the official security of a public officer against him and a surety, there shall be indorsed a direction to the officer to whom the execution shall be delivered, to collect the same out of the property of the principal, if sufficient can be found, and if not, then to collect it out of the property of the surety.

Securities, how and when apportioned. SEC. 7. If there be several judgments on which executions are at the same time in the sheriff's hands against a public officer and his sureties, amounting in the aggregate to a sum greater than that for which the sureties are liable, the court shall, on their application, limit the amount to be collected from them to the amount of their respective liabilities, and may cause the same to be applied on the judgments or executions in proportion to their amounts.

Actions for fines and forfeitures. SEC. 8. Actions for fines and forfeitures may be prosecuted by the officers or persons to whom they are by law given, or those who by special provision of law are authorized to recover them; and whether prosecuted by public officers or private persons, shall be governed by the same rules as other civil actions, except as otherwise specified in this chapter.

When the penalty is limited.

SEC. 9. When an action shall be brought for a penalty, which is limited by law not to exceed a certain amount, the action may be brought for that amount, and upon the trial, the amount recovered shall be determined in proportion to the offence.

Judgment by collusion

SEC. 10. A recovery of a judgment for a penalty or forfeiture by collusion between the parties, with intent to save the defendant from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the prosecutor, shall not prevent the recovery of the same by another person.

Certain fines to be paid into treasury.

SEC. 11. Fines and forfeitures not specially granted or appropriated by law, shall be paid into the territorial treasury; and whenever, by the provision of law, any property, real or personal, shall be forfeited to the territory, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer in the District Court of any county where such property may be.

# CHAPTER II.

## ACTIONS BY AND AGAINST CERTAIN PUBLIC OFFICERS, AND PUBLIC BODIES.

SEC. 1. Who may sue in official capacity.
2 In what cases official persons may sue
3. When special department of corporation sues
4 & 5 How actions may be brought.
6 & 7. When judgment against county, to be presented to commissioners, and how satisfied.
8. Payment of judgment by county treasurer.
9. Execution not to issue, except on leave.
10 Act when to take effect.

Who may prosecute in official capacity.

SEC. 1. The following officers may prosecute actions in their official capacity.

1. The board of county commissioners of a county;
2. The directors of a school district;
3. Any organized department of a municipal corporation, having a board of officers in charge of a particular branch of public service, and specially authorized by statute to prosecute. In such action the plaintiffs may be designated by their official name, or the action may be brought in the name of the body in whose behalf the action is brought.

For what actions

SEC. 2. Every such action shall be either:

1. On a contract made with such officers in their official capacity; or
2. To enforce a liability or a duty enjoined by law in favor of such officers, or the body represented by them; or
3. To recover a penalty or forfeiture given to such officers or body; or

4. To recover damages for an injury to their official rights or property.

When special department sues.

SEC. 3. When an organized department of a municipal corporation is authorized by statute to sue, it shall, for purposes of the action, be deemed the real party in interest, though the corporation, of which it is the department, be the party to be ultimately benefited by the action, or responsible for any costs incurred therein.

Action, how brought.

SEC. 4. An action may be brought against the officers, mentioned in section one, in their official capacity, or against the body they represent, either upon a contract made by such officers in their official capacity, and within the scope of their authority; or for an injury to the rights of the plaintiff, arising from some act or omission of such officers, or of the body represented by them.

Ib.

SEC. 5. The actions authorized by this chapter, may be brought by or against the officers mentioned in section one, upon a cause of action which accrued during the term of their predecessors, as well as during their own term of office, and when brought may be continued by or against their successors in office, whose names may for that purpose be substituted in the action.

Judgment, when presented to commissioners.

SEC. 6. If judgment for the recovery of money be rendered against a county, or the board of commissioners of a county, on account of the liability of such county, and the judgment be not satisfied, or proceedings thereon stayed by appeal or otherwise, before the next regular meeting of the board of commissioners of the county, a certified copy of the docket of the judgment may be presented to the board of commissioners at such, or at any subsequent regular meeting.

How satisfied.

SEC. 7. The board of commissioners shall thereupon cause the amount due on the judgment, with interest from the time of the recovery, to be added to the tax of the county for whose liability the same was recovered, and the same shall be collected as other contingent charges of the county.

Payment of judgment by county treasurer.

SEC. 8. The treasurer of a county against which, or against whose officers a judgment has been recovered for a liability of the county, the execution of which has not been stayed upon appeal, shall, upon demand and delivery to him of a certified copy of the docket of the judgment, pay the amount due thereon, if there be sufficient money of the county in his hands not otherwise specifically appropriated. If he fail to do so, he shall be personally liable for the amount, unless the collection thereof be afterwards stayed upon appeal.

Leave to issue execution.

SEC. 9. Execution shall not be issued on a judgment rendered against a county or its officers, without leave of the court; nor shall leave be granted until the court is satisfied that payment has been demanded of the proper county officers, as provided in the last two sections, and that the board of commissioners have wrongfully omitted to include the amount in the tax list, as provided in section seven; when execution is issued, the property of the county only is liable thereon.

SEC. 10. This act shall take effect and be in force, from and after the first day of May next.

*Passed Jan. 7th*, 1854.

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## *AN ACT* CONCERNING THE LIENS OF MECHANICS, LABORERS AND OTHER PERSONS.

## CHAPTER I.

### MECHANICS AND LABORERS' LIENS

TITLE I. *Lien on Buildings.*
TITLE II. *Liens on Personal Property.*

### TITLE I.

### *Lien on Buildings.*

SEC. 1 Lien on buildings
2 Notice of lien to be filed.
3 How long such lien exists
4. Complaint, what to contain.
5 Summons, how served.
6 Proceedings to enforce lien.
7. Mechanics' liens, when preferred to other liens
8 Lien against buildings, when to extend to lot
9 Several may join claims how stated
10 Satisfaction of lien must be entered.
11 Notice of sub-contractor's claim.
12 Claim recovered by sub-contractor may be set off against contractor's demand.

Lien on buildings.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That any person who shall hereafter, by virtue of any contract with the owner of any building, or with the agent of such owner, perform any labor upon, or furnish any materials, engine or machinery for the construction or repairing of such building, shall, upon filing the notice prescribed in the next section, have a lien upon such building, and the lot of ground upon which the same is situated, for such labor done; or materials, engine or machinery furnished, when the amount shall exceed twenty dollars.

Notice of lien to be filed.

SEC. 2. Any person wishing to avail himself of the provisions of this chapter, whether his claim be due or not, shall file in the recorder's office of the county in which such building is situated, at any time within three months after the completion of such building or repairs, a notice of his intention to hold a lien upon such building for the amount due, or to become due, specifically setting forth such amount, and containing a description of the building upon which the labor was performed, or for which the materials, engine or machinery were furnished; which notice shall be recorded by the recorder in a book to be kept for that purpose.

How long lien exists.

SEC. 3. Such lien shall cease to exist at the expiration of one year after the completion of the building or repairs, unless before that time an action to enforce the same shall have been commenced in the District Court of the county in which the premises are situated, by the person having such lien, against the owner with whom or with whose agent the contract was made, unless such claim be not due at the expiration of one year after such completion, in which case the action shall be commenced within three months after the same shall have become due.

Complaint, what to contain.

SEC. 4. The complaint of the plaintiff shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the recorder, the time when the building was completed, if it be completed, with a description of the premises, and any other material facts, and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the lien.

Summons, how served.

SEC. 5. The summons shall be served as in other cases, or instead of service by publication, it may be made by delivering a copy thereof to the person in possession of the premises. If the defendant shall have sold or disposed of the premises before the service of the summons, the court shall direct notice of the proceedings to be served on the purchaser, or his agent for the premises, who may thereupon, if he desire it, be made a party defendant in the action.

Proceedings to enforce lien.

SEC. 6. The proceedings in an action to enforce such lien, shall be the same as in other actions, except as otherwise provided in this chapter; and if judgment be rendered for the plaintiff, he may have an execution issued thereon to sell the premises, and thereupon the sheriff shall proceed as upon other executions for the sale of real property; and the owner or any lien creditor shall have the same rights of redemption after a sale.

Mechanics' liens when preferred to other liens.

SEC. 7. The liens created in pursuance of the provisions of this chapter shall have precedence over all other liens, after the commencement of the building, and if, upon a sale of the premises by execution, the proceeds be insufficient to pay all such liens, the court shall order them to be paid in proportion to the amount respectively due to each, and any other property of the defendant, not exempt from execution, may be sold to satisfy such execution.

Ib., when to extend to lot.

SEC. 8. The liens against any building shall also extend to the lot of ground upon which such building is erected, not exceeding one-half of an acre in extent, if the land shall have been, at the time of erecting such building, the property of the person who shall have caused the same to be erected. The metes and bounds of such lot may be determined by the parties, or if they cannot agree upon the same, the court, at any time after the rendition of judgment, may appoint one or more referees to determine such boundaries.

Several persons may join: claims, how stated.

SEC. 9. All, or any number of persons having liens on the same building, pursuant to the provisions of this chapter, may join in one action, but their claims shall be stated distinctly, as in a separate action, and the judgments shall show the amounts to which they are respectively entitled.

SEC. 10. Whenever any person, having a lien, by virtue of the provisions of this chapter, shall have received satisfaction for his claim and the costs of his proceedings thereon, he shall, upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction, within six days after such payment or tender, enter satisfaction of his demand in the office where the same is recorded; and, upon failure to do so, he shall forfeit fifty dollars to the party aggrieved, and all damages which he may have sustained in consequence of such failure or neglect.

Satisfaction of lien must be entered.

Notice of sub-contractor's claim.

SEC. 11. Any sub-contractor, journeyman, or laborer employed in the construction or repairing of any building, or in furnishing any materials or machinery for the same, may give the owner thereof notice in writing, particularly setting forth the amount of his claim and the service rendered, for which his employer is indebted to him, and that he holds the owner responsible for the same, and the owner of the building shall be liable for such claim, if indebted to the employer to the amount; if not, then for the amount due from him to said employer at the time such notice was served, which claim or amount may be recovered by an action against the owner, if brought within one year after the completion of the building or the repairs.

Claim of sub-contractors may be set-off against contractor's demand.

SEC. 12. Whenever any sub-contractor, journeyman, or laborer, shall recover any such claim from the owner of the building, the same may be set off by such owner, in any action brought against him by the person who otherwise would be entitled to recover the same under the contract.

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## TITLE II.

### *Liens on Personal Property.*

SEC. 13. Lien of labor.
14. Lien of common carrier, grazier, herdsman, &c
15. Sale, &c., satisfaction of lien.
16. Foregoing provisions not to interfere with special agreements

Lien of laborer.

SEC. 13. Any person who shall make, alter, repair or bestow labor on any article of personal property, at the request of the owner or lawful possessor thereof, shall have a lien on such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the materials he has furnished; and such person may hold and retain possession of the same, until such just and reasonable charges shall be paid.

Lien of common carrier grazier, herdsman.

SEC. 14. Any person who is a common carrier, or who shall at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another; and any person who shall safely keep or store any personal property at the request of the owner or lawful possessor thereof; and any person who shall depasture or feed any horses, cattle, hogs, sheep, or other live stock, or bestow any labor, care or attention upon the same, at the request of the owner or lawful possessor thereof, shall have a lien upon such property, for his just and reasonable charges for the labor, care and attention he has bestowed, CHAP. 2. and the food he has furnished, and he may retain the possession of such property until such charges be paid.

Sale and satisfaction of lien. SEC. 15. If such just and reasonable charges be not paid within three months after the care, attention and labor shall have been performed or bestowed, or the materials or food shall have been furnished, the person having such lien may proceed to sell, at public auction, the property mentioned in the last two sections, or a part thereof, sufficient to pay such just and reasonable charges. Before selling, he shall give notice of such sale by advertisement for three weeks in some newspaper published in the county, if there be one, or if there be no such paper, then by posting up notice of such sale in three of the most public places in the city or township for three weeks before the time of such sale; and the proceeds of such sale shall be applied, first to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

Lien may be waived by agreement. SEC. 16. The provisions of the last three sections shall not interfere with any special agreement of the parties.

# CHAPTER II.

## OF PROCEEDINGS TO ENFORCE LIENS ON BOATS AND VESSELS.

SEC. 1. Liens on boats and vessels.
2. As to the priority of liens.
3 Action may be against owner, &c., or vessel.
4. Complaint to be filed and its requisites
5. Warrant of seizure, when to be issued.
6. Proceedings on return of warrant.
7. As to who may answer complaint.
8. Judgment, how rendered.
9. Undertaking and discharge of vessel.
10 Deposit in lieu of undertaking
11. Order of sale, what to require.
12. Judgment on undertaking.
13. Bill of sale, by whom executed.
14 Action against vessel by other parties, after sale.
15 Proceeds of sale, how distributed.
16. Order of sale, when modified.
17. Jurisdiction of justice of the peace.
18. Proceedings by justice.
19. Warrant of justice, when returnable.
20. Justice may grant continuance.
21. Fees of officers.
22. Appeal from justice's court.
23. Time for commencing actions.
24. Act when to take effect.

Liens on boats and vessels. SEC. 1. Every boat or vessel used in navigating the waters of this territory shall be liable and subject to a lien:

1. For wages due to persons employed, for work done or services rendered on board of such boat or vessel:

17 J R 54; 1 Wen 557, 5 do. 510; 20 do. 177, 181; 2. For all debts contracted by the master, owner, agent or consignee thereof, on account of labor done or materials furnished by mechanics, tradesmen or others, in the building, repairing, fitting

out, furnishing or equipping such boat or vessel, or on account of stores and supplies furnished for the use thereof;

5 Hill, 35, Comst. 439.

3. For all sums due for wharfage, anchorage or towage of such boats or vessels within this territory;

4. For all demands or damages accruing from the non-performance or mal-performance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of the boat or vessel on which such contract is to be performed, and for damages or injuries done to persons or property by such boat or vessel.

Priority of liens.

SEC. 2. The classes of claims above specified shall have priority, according to the order in which they are above enumerated, and the liens under this act shall have precedence of all other liens and claims against such boat or vessel.

Action, against owner, &c., or vessel.

SEC. 3. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof, against the master, owner, agent or consignee of the boat or vessel, may, at his option, commence an action against such boat or vessel by name.

Complaint, its requisites

SEC. 4. Any person wishing to commence an action against a boat or vessel, shall file his complaint against such boat or vessel, by name, with the clerk of the District Court of the county in which such boat or vessel may lie or be. The complaint shall set forth the plaintiff's demand in all its particulars, and on whose account the same accrued, and shall be verified by the plaintiff, or some creditable person for him.

Warrant of seizure.

SEC. 5. Whenever such complaint shall be filed, the clerk shall issue a warrant thereon, commanding the sheriff to seize the boat or vessel mentioned in the complaint, with her tackle, apparel and furniture, and retain the same until discharged from such custody by due course of law.

Proceedings on return of warrant.

SEC. 6. Upon the return of any warrant issued as prescribed in the last section, proceeding shall be had in the District Court against the boat or vessel seized, in the same manner as if the action had been commenced against the person on whose account the demand accrued.

Who may answer complaint.

SEC. 7. The master, owner, agent or consignee of the boat or vessel, may appear on behalf of such boat or vessel, and answer the complaint.

Judgment.

SEC. 8. If, in any action commenced under the provisions of this chapter, the master, owner, agent or consignee, shall not appear and answer the complaint, the plaintiff may proceed to take judgment in the same manner and under the same restrictions, as in a civil action against a natural person; if an issue of fact be joined, the same proceedings shall be had as in other actions.

Undertaking and discharge of vessel.

SEC. 9. If the master, owner, agent or consignee shall, before final judgment in any action, commenced in pursuance of the provisions of this chapter, enter into an undertaking in favor of the plaintiff, with sufficient security, to be approved by the judge or clerk of the court in which the action is pending, conditioned to

CHAP. 2. satisfy the amount which shall be adjudged to be due and owing to the plaintiff, on the determination of the action, together with all costs accruing, such boat or vessel, with its tackle, apparel and furniture, shall be discharged from further detention by the sheriff.

Deposit in lieu of undertaking. SEC. 10. Such master, owner, agent or consignee may, in lieu of the undertaking specified in the last section, deposit in court such an amount of money as the judge or clerk shall direct, being sufficient to pay the demand of the plaintiff and the costs of suit, which are likely to accrue in such action. If judgment be for the defendant, such deposit shall be returned to the person making the same, or if a balance remain after satisfying any judgment in favor of the plaintiff and costs of suits, such balance shall be so returned.

Order for sale. SEC. 11. If judgment be rendered against any boat or vessel in favor of the plaintiff, the court shall make an order directed to the sheriff, commanding him to sell such boat or vessel, together with its tackle, apparel and furniture, to satisfy the judgment and costs which may have accrued in the cause, which order shall be executed and returned in the same manner as other executions.

Judgment on undertaking. SEC. 12. If an undertaking with surety shall have been given according to the ninth section of this chapter, and judgment shall have been rendered in favor of the plaintiff, a judgment shall also be rendered upon the undertaking, and execution shall be issued for the amount of judgment and costs in favor of the plaintiff, against the principal and security in such undertaking.

Bill of sale, how executed. SEC. 13. When any boat or vessel shall be sold in pursuance of the provisions of this chapter, the officer making the sale shall execute to the purchaser a bill of sale therefor, and such boat or vessel shall, in the hands of the purchaser and his assigns, be free and discharged from all previous liens and claims under this chapter.

Action against vessel by other parties after sale. SEC. 14. Any other person having or claiming a lien against any boat or vessel in pursuance of the provisions of this chapter, may, at any time after the sale upon execution, and before payment over of any surplus in the hands of the sheriff, commence an action against such boat by name, as if the same had not been sold, and serve notice thereof upon the former master, owner, agent or consignee. While such action is pending, the sheriff shall not pay over any surplus that may be in his hands to such master, owner, agent or consignee.

Proceeds of sale, how distributed. SEC. 15. In the distribution of the proceeds of sale, claims of a prior class shall be paid entire before any payment shall be made upon claims of a subsequent class; and when the money to be applied to any class shall be insufficient to pay all the claims of that class, it shall be apportioned ratably among the claims of such class.

Order of sale, when modified. SEC. 16. If it shall appear to the court in which the action is pending, or the judge thereof, that the liens against such boat or vessel, can be satisfied by a sale of the tackle, apparel and furniture, or a part thereof, or a fractional share in such boat or vessel, such court or judge may modify the order of sale accordingly. If, in pursuance of such order, a sale be made of a fractional share in such boat or vessel, the purchaser shall hold such share jointly with the other owners.

Jurisdiction of justices

SEC. 17. Justices of the peace within their respective counties, shall have cognizance of all cases arising under this chapter, when the demand claimed shall not exceed the jurisdiction of a justice of the peace.

Proceeding by justice

SEC. 18. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justices' courts, and as near as may be to the provisions of this chapter, as they apply in the District Court.

Return of warrant.

SEC. 19. Each warrant issued by a justice of the peace under this chapter, shall be returnable forthwith; and upon the return of such warrant, it shall be the duty of the justice of the peace to hear and determine the complaint of the plaintiff in a summary manner.

Justice may grant continuance

SEC 20. Upon good and sufficient cause shown by the master, owner, agent or consignee of any boat or vessel seized under the provisions of this chapter, the justice of the peace may grant a continuance of the cause, but no such continuance shall be granted to the plaintiff.

Fees of officers.

SEC. 21. Sheriffs, constables and other officers, shall receive the same fees and compensation for their services under this chapter, as are allowed to them in proceedings by attachment.

Appeal.

SEC. 22. In all cases arising under this chapter, before justices of the peace, the plaintiff or the master, owner, agent or consignee, may appeal to the District Court, but if the plaintiff appeal, the constable or other officer shall not detain the boat or vessel in his custody, after the payment of such judgments as shall be rendered in favor of the plaintiff, by the justice of the peace.

Limitation of action.

SEC. 23. All actions against a boat or vessel, under the provisions of this chapter, shall be commenced within one year after the cause of action shall have accrued.

When to take effect.

SEC. 24. This act shall take effect and be in force from and after the first day of May next.

*Passed December 22d, 1853.*

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## *AN ACT* TO REGULATE ARBITRATIONS.

## CHAPTER I.

### ARBITRATIONS.

SEC. 1 Controversies that may be submitted.
2 When submission not to be made.
3 Submission how made.
4 Agreement to submit, what to contain.
5. Submission not to be revoked.
6. Arbitrators to appoint a time of hearing.
7. Oath of arbitrators
8. Time of making award.
9. Award to be in writing
10. Award to be delivered to clerk.

CHAP. 1.

SEC. 11. Cognizance thereof by court.
12. Award may be accepted, rejected, or recommitted.
13. Grounds for vacating award.
14. Grounds for correcting award.
15. Award when to be returned to court.
16. Judgment costs.
17. Record of judgment, what to contain.
18. Effects of judgment.
19. Arbitrators may award costs in certain cases.
20. Courts may enforce judgment.
21. Power of arbitrators
22. This act when to take effect.

Controversies that may be submitted.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all controversies which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators, in the manner provided in this chapter.

When submission not to be made.

SEC. 2. No such submission shall be made respecting the claim of any person to any estate in fee or for life to any real estate, but any claim to an interest for a term of years, or for one year or less, in real estate, and controversies respecting the partition of lands between joint tenants or tenants in common, or concerning the boundaries of lands, or concerning the admeasurement of dower, may be submitted to arbitration; but nothing in this chapter contained, shall preclude the submission and arbitrament of controversies according to the common law.

Submission how made.

SEC. 3. The parties may appear in person or by their lawful agents, or attorneys, before any justice of the peace or clerk of the District Court, and there sign and acknowledge an agreement in substance as follows:

"Know all men that A. B., of , and C. D., of , have agreed to submit the demand, a statement whereof is hereto annexed, (and all other demands between them, as the case may be,) to the determination of , and ; the award of whom, or the greater number of whom being made and reported within days from this date, to the District Court for the county of , shall be final; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing, the other parties may proceed in his absence.

Dated this day of , A. D. 185 . A. B.
C. D."

And the justice or clerk shall subjoin to the said agreement his certificate, in substance as follows:—

*Territory of Oregon,* } *ss.*
*County of* }

Personally appeared before me, the above named A. B. and C. D., (or personally appeared the above named A. B., and the said C. D., by , his attorney, as the case may be,) and acknowledged the above instrument by them signed, to be their free act.

Dated this day of , 185 .
J. P., *Justice of the Peace.*

Agreement what to contain.

SEC. 4. If any specific demand be submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement of submission, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other, or the submission may be varied in this respect, in any other manner, according to the agreement of the parties.

Submission not to be revoked.

SEC. 5. Neither party shall have power to revoke a submission, made as herein provided, without the consent of the other; and if either of them shall neglect to appear before the arbitrators, after due notice, the arbitrators may, nevertheless, proceed to hear and determine the cause, upon the evidence produced by the other party, as provided in the agreement of submission.

Time, &c, of hearing. 1 Barb. 325; 8 Barb 275.

SEC. 6. The arbitrators thus selected shall appoint a time and place for the hearing, and shall adjourn the same from time to time, as may be necessary; and on the application of either party, and for good cause, they may postpone such hearing to a time, not extending beyond the day fixed in such submission, for rendering their award.

Oath of arbitrators. 1 Denio, 440.

SEC. 7. Before proceeding to hear any testimony, the arbitrators shall be sworn, by any officer authorized to administer oaths, faithfully and fairly to hear and examine the matters in controversy, and to make a just award according to law and evidence, to the best of their understanding.

Time of making award.

SEC. 8. The time, within which the award shall be made and reported, may be varied according to the agreement of the parties; and no award made after the time so agreed upon, shall have any legal effect or operation, unless made upon a recommitment of the award by the court to which it is reported.

Award to be in writing

SEC. 9. To entitle any award to be enforced according to the provisions of this chapter, it must be in writing, and subscribed by the arbitrators making the same.

To be delivered to clerk.

SEC. 10. The award shall be delivered by one of the arbitrators to the clerk of the District Court, designated in the agreement of submission, or shall be enclosed and sealed by them and transmitted to the clerk, and shall remain sealed, until opened by such clerk.

Cognizance thereof by court.

SEC. 11. The court to which the award is returned, shall have cognizance thereof, in the same manner, and the same proceedings shall be had thereon, as if it had been made by referees appointed by a rule of the same court.

Award may be accepted, rejected o recommitt

SEC. 12. The award may be rejected by the court for any legal and sufficient reason, or it may be recommitted to the same arbitrators, for a rehearing by them; and when an award is accepted and confirmed by the court, judgment shall be rendered thereon, in the same manner as upon a like award made by referees appointed by a rule of the court, and execution shall issue accordingly.

Grounds of vacating award. SEC. 13. Any party complaining of such award may move the court, designated in such submission, to vacate the same upon either of the following grounds:—

10 Wen 589, 17 do. 410. 1. That such award was procured by corruption, fraud, or other undue means;

4 Denio 194; 4 Com. 568. 2. That there was evident partiality or corruption in the arbitrators or either of them;

3. That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or other misbehavior, by which the rights of such party shall have been prejudiced;

1 Barb Ch. 173; 4 Denio 249; 1 Barb. 235; 3 do. 56; 7 do. 481 4. That the arbitrators exceeded their powers, or that they so imperfectly executed them, that a mutual, final and definite award on the subject matter submitted was not made;

5. That the award was contrary to law and evidence.

Ib. Of correcting award. SEC. 14. Any party to such submission may also move the court, designated therein, to modify or correct such award in the following cases:—

10 Wen 589. 1. When there is an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in such award:

1 Barb. 325; 4 do. 250; 7 do. 481. 2. Where the arbitrators shall have awarded upon some matter not submitted to them, nor affecting the merits of the decision upon the matters submitted;

3. Where the award shall be imperfect in some matter of form not affecting the merits of the controversy, and where, if it had been a verdict, such defect could have been amended or disregarded by the court, according to the provisions of law.

Return of award. SEC. 15. The award may be returned at any term or session of the court, that shall be held within the time limited in the submission; and the parties shall attend at every such term or session, without any express notice for that purpose, in like manner as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party, when it shall appear to them necessary or proper, before they proceeded to act upon the award.

Judgment. SEC. 16. Upon such award being confirmed or modified, the court shall render judgment in favor of the party to whom any sum of money or damages shall have been awarded, that he recover the same; and if the award shall have ordered any act to be done by either party, judgment shall be entered that such act be done according to such order. Costs, how taxed. The costs of proceedings shall be taxed as in suits, and if no provision for the fees and expenses of the arbitrators shall have been made in the award, the court shall make a suitable allowance.

Record of judgment. SEC. 17. A record of such judgment shall be made, commencing with a memorandum reciting the submission, then stating the hearing before the arbitrators, their award, the proceedings of the court thereupon, in modifying or confirming such award, and the judgment of the court for the recovery of the debt or damages awarded, or other act to be done, and that the parties perform the acts ordered by the award, and for the recovery of the costs allowed.

Effects of judgment; execution.

SEC. 18. Such record shall be filed and docketed as records of judgments in other cases; shall have the same force and effect in all respects; be subject to all the provisions of law in relation to judgments in actions, and may in like manner be moved and reversed by writ of error or appeal, and execution shall issue thereupon.

Arbitrators may award costs.

SEC. 19. If there be no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum charged for the compensation of the arbitrators, if it shall appear to them unreasonable.

Enforcing judgment.

SEC. 20. Where, by such judgment, any party shall be required to perform any act other than the payment of money, the court rendering such judgment shall enforce the same by rule; and the party refusing or neglecting to perform and execute such act, or any part thereof, shall be subject to all the penalties of contemning an order of such court.

Power of arbitrators.

SEC. 21. The arbitrators shall hear and receive the testimony of either party under oath; and shall have full power to administer all necessary oaths to parties, or witnesses appearing before them; and any such party or witnesses swearing wilfully and corruptly false, on any such hearing or examination, shall be deemed guilty of perjury.

SEC. 22. This act shall take effect and be in force from and after the first day of May next.

*Passed January 18th, 1854.*

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## *AN ACT* RELATING TO THE WRIT OF HABEAS CORPUS, AND PROCEEDINGS THEREON.

## CHAPTER I.

### OF HABEAS CORPUS.

SEC 1. Who may prosecute *habeas corpus*
2 Application for writ, how and to whom made.
3 Proof required when application made in another county.
4 Petition for writ, what to state.
5. When writ to be granted; and without delay.
6. Form of writ of *habeas corpus.*
7. When writ sufficient.
8. Penalty on officers for refusing writs.
9. Return to writ, its contents, when to be sworn to.
10 Body of prisoner to be brought up on *habeas corpus.*
11 Proceedings on disobedience of writ.
12. Proceedings against sheriff for neglect.
13. Prisoner to be produced before judge.
14. Officer executing attachment may call power of the county.
15 Proceedings on return of writ.
16. Prisoner, when to be discharged.

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SEC 17. When to be remanded.
18. Prisoner on civil process, when to be discharged.
19. Legality of certain commitments not to be inquired into.
20. Proceedings in irregular criminal commitments.
21. Proceedings when prisoner is not discharged or bailed.
22 Custody of prisoner between judgment and return thereon.
23 Notice, when to be given.
24. Notice to prosecuting attorney.
25. Return may be controverted.
26. Proceedings in case of sickness of prisoner.
27. Obedience to writ and order, how enforced.
28. Officer not liable to action for obeying writ.
29. Persons once discharged cannot be re-imprisoned.
30. Penalty for re-committing person discharged.
31. Penalty for concealing prisoner, &c., after writ allowed.
32. When warrant may issue to take person illegally confined.
33. When to take person confining him.
34. Warrant, how executed; proceedings thereon.
35. Proceedings against person detaining prisoner.
36. Penalty for refusing copy of process to prisoner.
37. *Habeas corpus*, how to be made returnable.
38. Allowance to be indorsed, how signed.
39. *Habeas corpus*, how served; when fees and bond required.
40. Mode of serving writ of *habeas corpus*.
41. How served when person conceals himself, &c.
42. When and how fees allowed to persons not officers.
43. Time allowed for making return to writ.
44. This act, when to take effect.

Who may prosecute a writ of habeas corpus.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That every person imprisoned or otherwise restrained of his liberty, may prosecute a writ of *habeas corpus*, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint if it shall prove to be unlawful.

Application for writ. 3 Hill, 405.

SEC. 2. Application for such writ shall be made by petition, signed by the party for whose relief it is intended, or by some person in his behalf, to any judge of the Supreme or District Court being within the county where the prisoner is detained; or, if there be no judge within such county, or if he be absent, or for any cause be incapable of acting, or having refused to grant such writ, then to any other judge of the Supreme or District Court most convenient to the place where such prisoner is detained.

Ib. In another county proof required.

SEC. 3. Whenever application for any such writ shall be made to such judge, not being within the county where the prisoner is detained, he shall require proof, by the oath of the applicant or other sufficient evidence, that there is no judge in such county authorized to grant the writ; or if there be one, that he has refused to grant it; or, for some cause to be specially set forth, is incapable of acting; and if such proof be not produced, the application shall be denied.

Petition for writ, and what to state.

SEC. 4. The petition shall state, in substance,

1. That the person in whose behalf the writ is applied for, is imprisoned or restrained of his liberty, the officer or person by whom he is so confined or restrained, and the place where—naming all the parties, if their names be known, or describing them if they be not;

2. The cause or pretence of such confinement or restraint, according to the best of the knowledge and belief of the applicant;

3. If the confinement or restraint be by virtue of any warrant, order or process, a copy thereof shall be annexed, or it shall be

averred, that by reason of the prisoner being removed or concealed before the application, a demand of such copy could not be made; or that such demand was made, and the legal fees therefor tendered to the officer or person having such prisoner in his custody, and that such copy was refused;

4. If the imprisonment be alleged to be illegal, the petition shall also state in what the alleged illegality consists;

5. It shall be verified by the oath of the applicant, or some other competent person.

When writ to be granted.

SEC. 5. Any judge empowered to grant any writ applied for under this chapter, to whom such petition shall be presented, shall grant such writ without delay, unless it appear from the petition itself, or the documents annexed, that the party can neither be discharged, admitted to bail, nor in any other manner relieved under the provisions of this chapter.

Form of writ.

SEC. 6. Every writ of *habeas corpus* shall be substantially in the following form:

"*In the name of the United States:*

To the sheriff of, &c., (or to A. B.)

You are hereby commanded to have the body of C. D., by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said C. D. shall be called or charged before E. F., judge of the District Court (or Supreme Court) at, &c. ———, on the ——— day, &c., (or immediately after the receipt of this writ,) to do, and receive what shall then and there be considered concerning the said C. D. And have you then and there this writ.

Witness, &c."

When writs sufficient.

SEC. 7. Such writ of *habeas corpus* shall not be disobeyed for any defect in form. It shall be sufficient:

1. If the person having the custody of the prisoner be designated either by his name of office, if he have any, or by his own name; or, if both such names be unknown or uncertain, he may be described by an assumed appellation, and any one who may be served with the writ, shall be deemed the person to whom it is directed, although it may be directed to him by a wrong name or description, or to another person;

2. If the person, who is directed to be produced, be designated by name, or if his name be uncertain or unknown, he may be described in any other way, so as to designate the person intended.

Penalty for refusing writ

SEC. 8. If any judge authorized by the provisions of this chapter, to grant writs of *habeas corpus*, shall wilfully refuse to grant such writ when legally applied for, he shall forfeit for every such offence, to the party aggrieved, one thousand dollars.

Return to writ.

SEC. 9. The person upon whom any such writ shall have been duly served, shall state in his return, plainly and unequivocally:

1. Whether he have or have not the party in his custody or power, or under his restraint; and if he have not, whether he has

CHAP. 1. had the party in his custody, or under his power or restraint at any, and what time prior or subsequent to the date of the writ;

2. If he have the party in his custody or power, or under his restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large;

3. If the party be detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited, on the return of the writ, to the judge before whom the same is returnable;

4. If the person upon whom such writ shall have been served, shall have had the party in his power or custody, or under his restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority such transfer took place. The return shall be signed by the person making the same, and, except where such person shall be a sworn public officer, and shall make his return in his official capacity, it shall be verified by oath.

To be signed, and when to be sworn to.

Body of prisoner, when to be brought up.

SEC. 10. The person or officer on whom the *habeas corpus* shall have been served, shall also bring the body of the person in his custody, according to the command of such writ, except in the case of the sickness of such person, as hereinafter provided.

Proceedings on disobedience of writ.

SEC. 11. If the person upon whom such writ shall have been duly served, shall refuse or neglect to obey the same by producing the party named in such writ, and making a full and explicit return to every such writ within the time required by the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, it shall be the duty of the judge before whom such writ shall have been made returnable, upon due proof of the service thereof, forthwith to issue an attachment against such person, directed to the sheriff of any county in this territory, and commanding him forthwith to apprehend such person and bring him immediately before such judge; and, on such person being so brought, he shall be committed to close custody in the jail of the county in which such judge shall be, until he shall make return to such writ, and comply with any order that may be made by the judge in relation to the person for whose relief such writ shall have been issued.

Ib. Against a sheriff.

SEC. 12. If a sheriff of any county shall have neglected to return such writ, the attachment may be directed to any coroner or other person to be designated therein, who shall have full power to execute the same; and such sheriff, upon being brought up, may be committed to the jail of any county other than his own.

Prisoner to be produced.

SEC. 13. The judge, by whom any such attachment shall be issued, may also, at the same time or afterwards, issue a precept to the sheriff or other person to whom such attachment shall have been directed, commanding him to bring forthwith, before such judge, the party for whose benefit such writ shall have been allowed, who shall thereafter remain in the custody of such sheriff or person, until he shall be discharged, bailed or remanded, as the judge shall direct.

Power of the county.

SEC. 14. In the execution of such attachment or precept, or either of them, the sheriff or other person to whom they shall be directed, may call to his aid the power of the county, as in other cases.

Proceedings on return of writ. 25 Wen. 566

SEC. 15. The judge, before whom the party shall be brought on such writ, shall, immediately after the return thereof, proceed to examine into the facts contained in such return, and into the cause of the confinement or restraint of such party, whether the same shall have been upon commitment for any criminal or supposed criminal matter, or not.

When prisoner to be discharged. 4 Barb 31; 6 do. 366.

SEC. 16. If no legal cause be shown for such imprisonment or restraint, or for the continuation thereof, the judge shall discharge such party from the custody or restraint under which he is held.

When to be remanded.

SEC. 17. It shall be the duty of the judge forthwith to remand such party, if it shall appear that he is legally detained in custody, either:

1. By virtue of process issued by any court or judge of the United States, in a case where such court or judge has conclusive jurisdiction; or,

2. By virtue of the final judgment or decree of any competent court of civil or criminal jurisdiction, or of any execution issued upon such judgment or decree; or 1 Hill 157, 5 do 167; 10 Paige, 284.

3. For any contempt, specially and plainly charged in the commitment, by some court officer or body having authority to commit for the contempt so charged, and

4. That the time during which such party may be legally detained, has not expired.

When to be discharged in civil cases.

SEC. 18. If it appear on the return that the prisoner is in custody by virtue of civil process of any court legally constituted, or issued by an officer, in the course of judicial proceeding before him, authorized by law, such prisoner shall only be discharged in one of the following cases:

1. When the jurisdiction of such court or officer has been exceeded, either as to matter, place, sum or person;

2. When, though the original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged;

3. When the process is defective in some matter of substance required by law, rendering such process void; 4 Barb 31.

4. When the process, though in proper form, has been issued in a case not allowed by law;

5. When the person having the custody of the prisoner under such process, is not the person empowered by law to detain him; or

6. When the process is not authorized by any judgment or decree of any court, nor by any provision of law.

Restriction on judge 5 Hill, 167

SEC. 19. But no judge, on the return of any *habeas corpus* issued under this chapter, shall have power to inquire into the legality or justice of any judgment, decree or execution specified in section seventeen.

Irregular

SEC. 20. If it appear that the party has been legally committed

Criminal commitments.

for any criminal offence, or if he appear by the testimony offered with the return, upon the hearing thereof, to be guilty of such an offence, although the commitment be irregular, the judge, before whom such party shall be brought, shall proceed to let such party to bail, if the case be bailable, and good bail be offered, or if not, shall forthwith remand such party.

Remanding prisoner, &c.

SEC. 21. If the party be not entitled to his discharge, and be not bailed, the judge shall remand him to the custody, or place him under the restraint from which he was taken, if the person under whose custody or restraint he was, be legally entitled thereto; if not so entitled, he shall be committed by such judge to the custody of such officer or person as by law is entitled thereto.

Custody of prisoner.

SEC. 22. Until judgment be given upon the return, the judge before whom such party shall be brought, may either commit such party to the custody of the sheriff of the county in which such judge shall be, or place him in such care or under such custody as his age and other circumstances may require.

Notice to parties. 12 Wen. 231.

SEC. 23. When it appears, from the return of any such writ, that the party named therein is in custody on any process under which any other person has an interest in continuing his imprisonment or restraint, no order shall be made for his discharge, until it shall appear that the party so interested, or his attorney, if he have one to be found within the county, shall have had sufficient notice of the time and place at which such writ shall have been made returnable.

Notice to prosecuting attorney. 10 Paige, 605, 611.

SEC. 24. When it shall appear from the return that such party is detained upon any criminal accusation, such judge shall make no order for the discharge of such party, until sufficient notice of the time and place at which such writ shall have been returned, or shall be made returnable, shall be given to the prosecuting attorney of the county in which such judge shall be, if to be found within the county.

Evidence against return, &c. 3 Hill, 647, note; 1 Barb 349.

SEC. 25. The party brought before any judge, on the return of any writ of *habeas corpus*, may deny any of the material facts set forth in the return, or allege any fact to show, either that his imprisonment or detention is unlawful, or that he is entitled to his discharge, which allegations or denials shall be on oath; and thereupon the judge shall proceed in a summary way to hear such allegations and proofs as may be produced in support of such imprisonment or detention, or against the same, and to dispose of such party as the justice of the case may require.

Sickness, etc., of prisoner.

SEC. 26. Whenever, from sickness or infirmity of the person directed to be produced by any writ of *habeas corpus*, such person cannot, without danger, be brought before the judge before whom the writ is made returnable, the party in whose custody he is may state the fact in his return to the writ, verifying the same by his oath; and if the judge be satisfied of the truth of such allegation, and the return be otherwise sufficient, he shall proceed to decide upon such return, and to dispose of the matter; and if it appear that the person detained is illegally imprisoned, confined or restrained of his liberty, the judge shall grant a writ of discharge, commanding those having such person in their custody, to discharge him forthwith; and if it appear that such person is legally detained, imprisoned or confined, and is not entitled to be bailed, such judge shall cease from all further proceedings thereon.

Writ of discharge, &c., how enforced.

SEC. 27. Obedience to any writ of discharge, or to any order for the discharge of any prisoner, granted pursuant to the provisions of this chapter, may be enforced by the judge issuing such writ, or granting such order, by attachment, in the same manner as herein provided for a neglect to make a return to a writ of *habeas corpus*, and with the like effect in all respects; and the person guilty of such disobedience shall forfeit, to the party aggrieved, one thousand dollars, in addition to any special damage such party may have sustained.

Officers protected for obeying

SEC. 28. No sheriff or other officer shall be liable to any action at law for obeying any such writ or order of discharge, and if any action shall be brought against such officer for suffering any person committed to his custody to go at large, pursuant to any such writ or order, he may set up the same in answer in bar of the action.

Not to be reimprisoned.

SEC. 29. No person who has been discharged by the order of any judge, upon a *habeas corpus*, issued pursuant to the provisions of this chapter, shall be again imprisoned, restrained or kept in custody for the same cause; but it shall not be deemed the same cause:

May be in certain cases

By court upon indictment, &c.

1. If he shall have been discharged from a commitment on a criminal charge, and be afterwards committed for the same offence by legal order or process of the court wherein he shall be bound by recognizance to appear, or in which he shall be indicted or convicted for the same offence; or

Upon new proof for process.

2. If, after a discharge for defective proof, or for any material defect in the commitment in a criminal case, the prisoner be again arrested on sufficient proof, and committed by legal process for the same offence; or

Legal process in civil action.

3. If, in a civil action, the party has been discharged for any illegality in the judgment or process hereinbefore specified, and is afterwards imprisoned by legal process for the same cause of action; or

In another action or in execution.

4. If, in any civil action, he shall have been discharged from commitment on process, and shall be afterwards committed on execution in the same cause, or on mesne process in any other cause, after such first action shall have been discontinued.

Penalty for recommitting

SEC. 30. If any person shall knowingly recommit, imprison, or restrain of his liberty, or cause to be committed, imprisoned, or restrained of his liberty, for the same cause, except as provided in the last section, any person so discharged, or shall knowingly aid or assist therein, he shall forfeit to the party aggrieved one thousand dollars.

Ib: for concealing prisoner after writ allowed.

SEC. 31. Any one having in his custody, or under his power, any person for whose relief a writ of *habeas corpus* shall have been, or is about to be duly issued, pursuant to this chapter, who, with the intent to elude the service of such writ, or to avoid the effect thereof, shall transfer such prisoner to the custody, or place him under the power or control of another, or conceal him, or change the place of his confinement, and every person who shall knowingly aid or assist in so doing, shall forfeit to the party aggrieved five hundred dollars.

Warrant for prisoner. SEC. 32. Whenever it shall appear, by satisfactory proof, that any person is held in illegal confinement, or custody, and that there is good reason to believe that he will be carried out of the territory, or suffer some irreparable injury before he can be relieved by the issuing of a *habeas corpus*, any judge authorized to issue such writs, may issue a warrant reciting the facts, and directed to any sheriff, constable, or other person, commanding such officer or person to take such prisoner, and forthwith to bring him before such judge, to be dealt with according to law.

For persons detaining him. SEC. 33. When the proof mentioned in the last section, shall also be sufficient to justify an arrest of the person having such prisoner in his custody, as for a criminal offence, committed in the taking or detaining of such prisoner, the warrant may also contain an order for the arrest of such person for such offence.

Execution of warrant; proceedings. SEC. 34. Any officer or person to whom such warrant shall be directed, shall execute the same by bringing the prisoner therein named, and the person who detains him, if so commanded by the warrant, before the judge issuing the same; and thereupon the person detaining such prisoner shall make a return in like manner, and the like proceedings shall be had, as if a writ of *habeas corpus* had been issued in the first instance.

Ib., against persons detaining prisoners. SEC. 35. If the person having such prisoner in his custody, shall be brought before the judge as for a criminal offence, he shall be examined, committed, bailed or discharged by the judges in like manner as in other criminal cases of the like nature.

Refusing copy of process. SEC. 36. Any officer or other person, refusing to deliver a copy of any order, warrant, process or other authority, by which he shall detain any person, to any one who shall demand such copy, and tender the fees therefor, shall forfeit two hundred dollars to the person so detained.

Return day. SEC. 37. Every writ of *habeas corpus* may be made returnable at a day certain or forthwith, as the case may require.

Allowance. SEC. 38. Every such writ shall be indorsed with a certificate that the same has been allowed, and with the date of such allowance, which indorsement shall be signed by the judge allowing the writ.

Serving writ, fees, bond, &c. SEC. 39. Writs of *habeas corpus* shall only be served by an elector of some county within this territory; and the service thereof shall not be deemed complete, so as to require the prisoner to be brought up before the judge issuing the same, unless the party serving the same, shall tender to the person in whose custody the prisoner may be, if such person be a sheriff, coroner, constable or marshal, the fees allowed by law for bringing up such prisoner; nor unless he shall also enter into an undertaking to such sheriff, coroner, constable or marshal, as the case may be, in a penalty double the amount of the sum for which such prisoner may be detained, if he be detained for any specific sum of money; and if not, then in such sum as the judge granting the writ shall direct, not exceeding one thousand dollars, conditioned that such person shall pay the charges for carrying back such prisoner if he shall be remanded, and that such prisoner will not escape by the way, either in going to or returning from the place to which he is to be taken. If such fees be not paid, or such security be not tendered, the officer to whom the writ is directed shall make return thereto, in the manner required by section nine of this chapter, and thereupon the judge granting the writ may proceed as if the prisoner were before him, or he may order him to be brought up notwithstanding.

Mode of serving writ

SEC. 40. Every writ of *habeas corpus* issued pursuant to this chapter, may be served by delivering the same to the person to whom it is directed; if he cannot be found, it may be served by being left at the jail or other place in which the prisoner may be confined, with any under officer, or other person of proper age, having charge for the time of such prisoner.

Ib., where person conceals himself, &c.

SEC. 41. If the person on whom the writ ought to be served, conceal himself, or refuse admittance to the party attempting to serve the same, it may be served by affixing the same in some conspicuous place on the outside, either of his dwelling-house, or of the place where the party is confined.

Fees to persons not officers.

SEC. 42. The judge allowing a writ of *habeas corpus*, directed to any other than a sheriff, coroner, constable or marshal, may, in his discretion, require, as a duty to be performed in order to render the service thereof effectual, that the charges of bringing up such prisoner shall be paid by the applicant; and, in such case, he shall, in the allowance of the writ, specify the amount of such charges so to be paid, which shall not exceed the fees allowed by law to sheriffs for similar services.

Time for returning writ

SEC. 43. If the writ be returnable at a day certain, such return shall be made, and such prisoner produced, at the time and place specified therein; if it be returnable forthwith, and the place be within twenty miles of the place of service, such return shall be made, and such prisoner shall be produced within twenty-four hours; and the like time shall be allowed for every additional twenty miles.

Act when to take effect.

SEC. 44. This act shall take effect and be in force from and after the first day of May next.

*Passed January 5th*, 1854.

# *AN ACT* RELATING TO THE QUALIFICATIONS OF JURORS, AND THE MODE OF SELECTING THEM.

## CHAPTER I.

### QUALIFICATIONS AND EXEMPTION OF JURORS.

SEC. 1 Qualifications of jurors.
2. Persons exempt from acting as jurors.
3. When persons may be excused from acting as jurors.

Qualifications of jurors.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That a person shall not be competent to act as a juror, unless he be:

1. A citizen of the United States;
2. An elector of the county in which he is returned;
3. Over twenty-one and under sixty years of age; and
4. In possession of his mental faculties;
5. Nor shall any person be competent to act as a juror who has been convicted of a felony or a misdemeanor, involving moral turpitude.

Persons exempt.

SEC. 2. A person shall be exempt from liability to act as a juror, if he be:

1. A judicial officer;
2. Any other civil officer of this territory, or of the United States, whose duties at the same time are inconsistent with his attendance as a juror;
3. An attorney or counsellor;
4. A minister of the gospel, or a priest of any denomination;
5. A teacher in a college, academy or school;
6. A practicing physician;
7. An officer, keeper or an attendant of an alms-house, poor-house, hospital, asylum or other charitable institution, created by or under the laws of this territory;
8. The captain, mate, or other officer or any person employed on board of a steamer, vessel or boat navigating the waters of this territory; also, ferrymen, millers and supervisors of roads.

When persons may be excused.

SEC. 3. A person may be excused from acting as a juror, when, for any reason, his interests or those of the public, will be materially injured by his attendance, when his own health or the sickness or death of a member of his family requires his absence.

## CHAPTER II.

### MANNER OF FORMING JURY LIST.

SEC. 1. County commissioners, when and how to form jury list
2. Persons to be selected as jurors.
3 & 4. Jury list; what to contain.
5. Clerk to keep jury box; ballots, how deposited.

List of county commissioners.

SECTION 1. The county commissioners of each county shall, at their first session of each year, or, in case of omission or neglect, then at any following session, make, from the assessment roll of the county, a list containing the names of persons to serve as jurors, until new lists be returned.

Persons to be selected.

SEC. 2. In preparing the jury list, the names of those persons only shall be selected who are known or believed to be possessed of the qualifications prescribed in this act, and not entitled to exemption.

Jury list, what to contain.

SEC. 3. The jury list shall contain the names of one hundred and fifty persons, if there are that number of qualified jurors within the county. They shall be apportioned among the different sections of the county, according to the number of persons on the assessment roll.

Ib.

SEC. 4. The jury lists shall contain the Christian and surname at length, and the place of residence and occupation of each person named therein, and shall be certified by the county commissioners and filed with their clerk.

Ballot box.

SEC. 5. The said clerk shall keep in his office a sufficient box, in which he shall prepare and deposit separate ballots, containing the names of all the jurors on the list. Each ballot shall be folded so that the name cannot be seen.

# CHAPTER III.

## MANNER OF DRAWING AND SUMMONING JURY.

SEC 1. Clerk to draw ballots; who to assist him
2. Drawing, when and where to take place.
3. Drawing, how to be conducted.
4. Trial jury, where and how to be drawn.
5. Clerk, &c., to sign the minutes of drawing
6. Certified list of trial and grand jurors to be given to sheriff.
7. Sheriff, when and how to summon grand jurors.
8 Sheriff to return list of jurors summoned.
9 Jurors, when and how punished for failing to appear
10 Number of jurors to constitute grand jury; deficiencies, how filled

Mode of drawing.

SEC. 1. The clerk of the board of commissioners shall call to his assistance the sheriff or his deputy, or a justice of the peace, and proceed to draw the ballots as hereinafter provided.

When and where the drawing shall take place

SEC. 2. The drawing shall take place at the office of the said clerk, not less than ten nor more than thirty days before the holding of each regular term of court, provided that, when any judge shall appoint a district court for the indictment and trial of any person, the drawing may take place at any time ordered by the judge, and the jurors for such appointed court shall be summoned forthwith by the sheriff.

Drawing, how conducted.

SEC. 3. The drawing shall be conducted as follows:

1. The clerk shall shake the box containing the ballots so as to mix them as much as possible;

CHAP. 8.

For grand jury. 2. He shall then draw out of the box twenty-three ballots, which said twenty-three ballots first drawn shall constitute the grand jury;

Each name drawn to be entered. 3. A minute of the drawing shall be kept, in which shall be entered the name contained on every ballot drawn, before any other shall be drawn.

Drawing of trial jury. SEC. 4. After the grand jury is completed, the clerk shall proceed to draw twenty-four ballots, which shall constitute the trial jury.

Minutes to be signed and filed. SEC. 5. The minutes of the drawing shall then be signed by the clerk and the attending officer, and forthwith filed in the office of the clerk of the board of commissioners.

Certified list to be given to sheriff. SEC. 6. A list of the names of persons drawn as grand jurors, and a list of the names of persons drawn as trial jurors, shall then be made, and certified by the clerk, and delivered to the sheriff of the county without delay.

Summoning jurors. SEC. 7. At least five days before the opening of the court, the sheriff shall summon the persons named in the lists delivered to him, to attend the court, by giving written notice to each of them personally, or by leaving the same at his place of residence, with some person of suitable age and discretion.

Return of lists. SEC. 8. The sheriff shall also return the lists to the District Court at its opening, specifying the persons summoned, and the manner in which each was summoned.

Fine for default. SEC. 9. Every person who shall fail to appear when lawfully summoned as a grand or petit juror, without having a reasonable excuse, shall be considered as being guilty of a contempt, and shall be fined by the court in any sum not exceeding twenty dollars, for the use of the county, unless good cause be shown for such default, at or before the next term of said court; and it shall be the duty of the clerk of the District Court, when directed by the court, to issue a summons against such delinquent, when such persons shall not come in without process, to show cause at the next term of court why he should not be fined for such contempt; *Provided*, That the oath or affirmation of any such delinquent shall at all times be received as evidence in his favor.

Deficiency of grand jurors, how filled. SEC. 10. When, of the persons summoned as grand jurors, sixteen or any number over shall attend, they shall constitute the grand jury. If any number less than sixteen shall attend, they shall be placed upon the grand jury, and the court shall order the sheriff to summon from the body of the county a sufficient number of persons to make up the deficiency. If the grand jury shall be diminished by challenge, or disqualifications, the panel may be filled in like manner.

# CHAPTER IV.

## FORMATION OF JURIES.

SEC. 1. Jury, how drawn.
2. When court may order sheriff to summon more jurors.
3. Clerk's certificate of juror's fees; fees, how paid.
4. Privilege of jurors.
5. Act, when to take effect.

Jury, how drawn.

SECTION 1. The clerk of the District Court shall prepare separate folded ballots, containing the names of the petit or trial juries, and deposit them in a box. He shall then draw from the box twelve names, and the persons drawn shall form a jury, unless some are rejected by challenge, disqualification or otherwise; in which case the clerk shall continue to draw until the panel is complete.

Vacancies, how filled.

SEC. 2. If necessary, the court may order the sheriff to summon persons from the body of the county to fill up the trial jury.

Certificate of juror's fees

SEC. 3. It shall be the duty of the clerk of the District Court, at the close of each term of said court, to make out a list of the grand and petit juries, certifying the number of days of attendance, and amount of compensation due to each one; which certificate shall be presented to the board of county commissioners and allowed as other demands against said county: *Provided*, That no juror shall be paid out of the county treasury for any day's attendance as a juror in the District Court of the territory, for which he may have received, or be entitled to receive, pay as a juror of the District Court of the United States.

Privilege of jurors.

SEC. 4. All grand and petit jurors shall be privileged from arrest in all cases, except for breach of the peace, treason, felony, and other criminal offences, during their attendance at said court, going to and returning from the same: *Provided*, That when any grand jury shall make presentment of one of their own body, he shall be liable to be proceeded against in the usual form.

SEC. 5. This act shall take effect and be in force from and after the first day of Mary next.

*Passed January* 10th, 1854.

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## *AN ACT* FOR THE LIMITATION OF ACTIONS.

# CHAPTER I.

## LIMITATION OF ACTIONS.

SEC. 1. Time of commencing actions in general.
2. Within twenty years.
3. Within ten years.
4. Within six years.
5. Within three years.
6. Within two years.
7. Within one year.

CHAP. 1. SEC. 8. Actions for penalties, &c, by any person who will sue, when to be brought.
9. Actions for relief not before provided for.
10. When cause of action accrued, in an action upon a current account.
11. Actions by the territory subject to the same limitation.
12. When action deemed to have been commenced.
13. Attempt to commence, deemed equivalent to commencement of action.
14. Exception when defendant is out of territory or concealed.
15. Exceptions as to persons under disabilities.
16. Provisions where person entitled, dies before limitation expires.
17. In actions by aliens, time of war to be deducted.
18. Time of stay, by injunction, or statutory prohibition, to be deducted.
19. Provision, when judgment has been reversed.
20. Disability must exist, when right of action accrued.
21. Where several disabilities, limitation does not attach till all removed.
22. Acknowledgments or new promise must be in writing.
23. Limitation to commence from time of partial payment.
24. No cause of action barred by statute of state where it accrued, is actionable.
25 This chapter not to extend to actions already commenced.
26. Act, when to take effect.

Time for commencing civil actions

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That actions shall only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except when in special cases a different limitation is prescribed by statute. But in the District Court the objection that the action was not commenced within the time limited, can only be taken by answer.

Within twenty years 8 Hill, 55; 6 do. 634.

SEC. 2. The periods prescribed in the preceding section for the commencement of actions, shall be as follows:

*Within twenty years:*

1. Actions for the recovery of real property, or for the recovery of the possession thereof; and no action shall be maintained for such recovery, unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seised or possessed of the premises in question, within twenty years before the commencement of the action.

Within ten years. 7 Wen. 242; 5 Hill, 409.

SEC. 3. *Within ten years:*

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States;

2. An action upon a sealed instrument.

Within six years. 1 Sandf. 93, 220; 8 Barb. 171.

SEC. 4. *Within six years:*

1. An action upon a contract or liability, express or implied, excepting those mentioned in the last section;

2. An action upon a liability created by statute, other than a penalty or forfeiture;

3. An action for waste or trespass upon real property;

6 Barb. 486

4. An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof;

5. An action for criminal conversation, or for any other injury to the person or rights of another, not hereinafter enumerated;

6. An action for relief, on the ground of fraud, in cases cognizable in a court of chancery; the cause of action in such case not to be deemed to have accrued, until the discovery by the aggrieved party of the facts constituting the fraud.

SEC. 5. *Within three years:*

Within three years 18 Wen. 40; 19 do. 283.

1. An action against a sheriff, coroner or constable, upon a liability incurred by the doing of an act in his official capacity, and in virtue of his office; or by the omission of an official duty; including the non-payment of money collected upon an execution. But this section shall not apply to an action for an escape.

1 Coms. 47.

2. An action upon a statute, for penalty or forfeiture, where the action is given to the party aggrieved, or to such party and the territory, except where the statute imposing it prescribes a different limitation.

Within two years.

SEC. 6. *Within two years:*

1. An action for libel, slander, assault, battery, or false imprisonment.

2. An action upon a statute for a forfeiture or penalty to the territory.

Within one year. 7 Wen. 459.

SEC. 7. *Within one year:*

An action against a sheriff or other officer, for the escape of a prisoner arrested on civil process.

Actions for penalties, &c., by any person who will sue.

SEC. 8. An action upon a statute, for a penalty given, in the whole or in part, to the person who will prosecute for the same, shall be commenced within one year after the commission of the offence; and if the action be not commenced within one year by a private party, it may be commenced, within two years thereafter, in behalf of the territory, by the district attorney of the county where the offence was committed.

Actions for relief, not before provided for.

SEC. 9. An action for relief, not hereinbefore provided for, shall be commenced within ten years after the cause of action shall have accrued.

Action on a current account. 1 Sanf. 220.

SEC. 10. In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the time of the last item proved in the account on either side.

Actions by the territory subject to the same limitations.

SEC. 11. The limitations prescribed in this chapter shall apply to actions brought in the name of the territory, or for its benefit, in the same manner as to actions by private parties.

When action deemed to have been commenced.

SEC. 12. An action shall be deemed commenced as to each defendant, when the summons is served on him, or on a co-defendant who is a joint contractor or otherwise united in interest with him.

Attempt to commence deemed equivalent to commencement.

SEC. 13. An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this chapter, when the summons is delivered, with the intent that it shall be actually served to the sheriff, or other officer of the county in which the defendants or one of them usually or last resided; or if a corporation be defendant, to the sheriff or other officer of the county in which such corporation was established by law, or where its general business was transacted, or where it kept an office for the transaction of business. But such an attempt shall be followed by the first publication of the summons, or the service thereof within sixty days.

Exception where defendant is

SEC. 14. If when the cause of action shall accrue against any person, who shall be out of the territory, or concealed, such action out of the territory or concealed. 1 Denio, 151; 5 do. 582, 2 Barb. 309; 1 do 76; 2 Sanf. 518.

may be commenced within the terms herein respectively limited, after the return of such person into the territory, or the time of his concealment; and if, after such cause of action shall have accrued, such person shall depart from and reside out of this territory, or conceal himself, the time of his absence or concealment shall not be deemed or taken as any part of the time limited for the commencement of such action.

Exception as to persons under disabilities.

SEC. 15. If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, be, at the time the cause of action accrued, either:

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life; or
4. A married woman;

The time of such disability shall not be a part of the time limited for the commencement of the action.

Provision where person entitled dies before limitation expires. 10 Wen. 278.

SEC. 16. If a person entitled to bring an action, die before the expiration of the time limited for the commencement thereof, and the cause of action survive, an action may be commenced by his representatives after the expiration of the time, and within one year from his death. If a person against whom an action may be brought, die before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his representatives after the expiration of that time, and within one year after the issuing of letters testamentary or of administration.

In actions by aliens time of war to be deducted.

SEC. 17. When a person shall be an alien subject or citizen of a country at war with the United States, the time of the continuance of the war shall not be a part of the period limited for the commencement of the action.

Time of stay by injunction or statutory prohibition to be deducted.

SEC. 18. When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition, shall not be a part of the time limited for the commencement of the action.

Provisions where judgment has been reversed.

SEC. 19. If an action shall be commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die, and the cause of action survives, his heirs or representatives, may commence a new action within one year after the reversal.

Disability must exist when right of action accrued.

SEC. 20. No person shall avail himself of a disability, unless it existed when his right of action accrued.

Where several disabilities all must be removed.

SEC. 21. When two or more disabilities shall co-exist at the time the right of action accrues, the limitation shall not attach until they all be removed.

Acknowledgment or new promise must be made in writing.

SEC. 22. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

SEC. 23. Whenever any payment of principal or interest has been or shall be made upon an existing contract, whether it be bill of exchange, promissory note, bond or other evidence of indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

Limitation from time of partial payment.

SEC. 24. When the cause of action has arisen in another state, territory or country, between non-residents of this territory, and by the laws of the state, territory or country where the cause of action arose, an action cannot be maintained thereon by reason of the lapse of time, no action shall be maintained thereon in this territory.

When cause of action is barred by the statutes of another state.

SEC. 25. This chapter shall not extend to actions already commenced, but the statutes now in force shall be applicable to such cases, according to the subject of the action, and without regard to form, nor shall any cause of action, barred by the statutes now in force, be revised by the provisions of this chapter.

This chapter not to extend to actions already commenced.

SEC. 26. This act shall take effect and be in force from and after the first day of May next.

*Passed January 6th,* 1854.

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## AN ACT TO REGULATE PROCEEDINGS IN SUITS IN EQUITY.

# CHAPTER I.

## SUITS IN EQUITY.

TITLE I. *Proceedings in Equity.*
TITLE II. *Of Writs of Ne Exeat.*
TITLE III. *Of the Granting of Injunctions.*
TITLE IV. *Of the Foreclosure of Mortgages.*
TITLE V. *Miscellaneous Provisions.*

## TITLE I.

### *Proceedings in Equity.*

SEC. 1. Exclusive jurisdiction of District Court in equity.
2. Suits in equity, where brought.
3. Complaint, how addressed and what to contain.
4. Pleadings of defendant.
5. Exceptions for insufficiency abolished, allegations deemed true unless denied.
6. Complaint and answer, how verified.
7. Rule requiring answer to be overcome, by two witnesses, &c., abolished.
8. Examination of parties, consequence of parties refusing to be examined.
9. Admissions of fraud, &c., not to be used except for relief.
10. In suits for recovery of money, set offs, how to be allowed.
11. Subpœna, how to issue and when returnable.
12. Subpœnas, when several defendants reside in different counties.
13. Service, how made.
14. Copy of bill to accompany subpœna.

TITLE 1.

SEC 15. Notice of suit by order, when and how given to non-residents.
16. Notice of suit by order when defendant cannot be found by sheriff.
17. When names of parties are unknown to defendant
18. Order against non-resident, absent or unknown defendant, how published.
19. When complainant may serve copy of bill out of territory.
20. Delivery, in such case how made.
21. Proceedings when several absent defendants have not been served.
22. Time allowed defendant to plead after service of subpœna.
23 Proceedings when defendant neglects to plead.
24. Defendant may exhibit interrogatories to complainant.
25. Complainant's answer evidence.
26. Complainant, when required to answer cross bill.
27. Rules by consent to be entered.
28. Amendments how allowed.
29. Cause, when deemed at issue.
30 Issue of fact how tried.
31 Rules for taking depositions.
32 Bill, when dismissed
33. Proceedings if defendant does not appear.
34. Complainant to give bond after decree and before issue of process against absent defendant.
35. When defendant may have the decree opened.
36 Rights of *bona fide* purchaser protected.
37 Effects of final decree
38 Decree, when to be considered executed.
39. Decree, how enforced.
40. Certain duties not to abate.
41. Proceedings by surviving parties.
42. Bill of revivor not necessary to revive suits against representatives, &c.
43. Service of order of revival, &c.
44 & 45. Proceedings in such cases, if no answer or disclaimer.
46 & 47. Husband, how made a party, and his privileges as such.

Jurisdiction of District Court in equity.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the district courts shall have exclusive jurisdiction of all suits in equity.

Suit where brought

SEC. 2. A suit in equity shall be brought in the county in which an action at law might be brought for a like purpose.

Complaint what to contain.

SEC. 3. The bill of the complainant shall be addressed "to the District Court of the county of ——," and shall consist of a statement of the facts constituting the cause of action, and a prayer for specific relief; upon which any relief may be given applicable to the facts stated; the charges and interrogatories, the confederacy and jurisdiction clauses, and the prayers for answer, for process, and for general relief, shall be omitted.

Pleadings of defendant.

SEC. 4. The defendant may disclaim, demur, plead or answer as heretofore, omitting all savings, protestations, prayers for dismissal, and other matters of mere form.

Exceptions for insufficiency abolished.

SEC. 5. Exceptions for insufficiency are hereby abolished, and every allegation in the bill not directly denied by the answer, or denied on belief, shall be taken to be true until disproved.

Verification of complaint and answer.

SEC. 6. The bill of the complainant, as well as the answer of the defendant, shall be verified by oath, to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and as to those matters that he believes it to be true.

Rule requiring answer to be over-

SEC. 7. The rule requiring the answer to be overcome by two witnesses, or their equivalent, is hereby abolished, and the credibility and effect of the answer, as evidence, shall be judged of as the statement of a witness in the same situation.

come by two witnesses, &c.

SEC. 8. Either party may examine the adverse party as a witness, and his refusal to testify, shall be taken as a confession of the bill or answer, as the case may be, saving the privilege of declining to answer questions which might subject the party to prosecution for felony; but an improper refusal to answer, under pretence of privilege, and every other evasion in testifying, shall be taken as proofs of the particular fact sought to be established.

Examination of parties, &c.

SEC. 9. No person shall be privileged from disclosing his fraudulent conveyances, confessions of judgment, or other fraudulent, illegal, or improper acts or omissions, affecting the rights of others, but his admissions shall not be used against him except for the relief of the injured party.

Admissions of fraud, &c., not to be used except for relief.

SEC. 10. In suits for the payment or recovery of money, set-off shall be allowed in the same manner, and with the like effect, as in actions at law.

Set-offs.

SEC. 11. Upon the filing of the bill the clerk shall issue a subpœna, returnable to the next term of the court, and directed to the sheriff of the county in which the defendant resides, requiring him to summon the defendant to appear and answer the bill.

Subpœna when issued.

SEC. 12. When there are several defendants residing in different counties, a separate subpœna shall be issued to each county, including all the defendants residing therein.

Subpœna when defendants reside in different counties.

SEC. 13. Every subpœna or process for appearance shall be served on the person to whom it is directed, by giving him a copy thereof, or if he be not found, by leaving a copy with some white person of the family, above the age of fourteen years, at the dwelling-house, or usual place of abode of the defendant.

Ib. How served.

SEC. 14. A copy of the bill shall accompany the subpœna and be delivered to the defendant, or left at the dwelling-house or place of abode of the defendant. If there be more than one defendant, such copy shall be given to the defendant, who shall be first served with the subpœna.

Ib. Of copy of bill.

SEC. 15. If any complainant or any person for him, shall file with his bill an affidavit, stating that part or all the defendants are non-residents of the territory, the clerk shall make an order directed to the non-residents, notifying them of the commencement of the suit, and stating briefly the object and general nature of the bill, and requiring them to appear on a day to be named therein (allowing sufficient time for publication) to appear and answer the bill, or that the same will be taken as confessed.

Notice by order to non-residents.

SEC. 16. When a subpœna shall be issued against any defendant, and the sheriff to whom it is directed, shall make return that the defendant cannot be found, the court being first satisfied that process cannot be served, shall make an order as is required in the preceding section in the case of non-resident defendants.

When defendant cannot be found.

SEC. 17. If any complainant shall allege in his bill that there are, or that he verily believes there are persons interested in the subject

Ib.; when names of parties are

unknown to complainant.

matter of the bill, whose names he cannot insert therein, because they are unknown to him, and shall describe the interest of such persons, and how derived, so far as his knowledge extends, and shall verify such allegations by affidavit to his bill annexed, the court, or in vacation, the judge or clerk thereof, shall make an order as in case of non-residents, reciting, moreover, all allegations in relation to the interest of such unknown parties.

Publication of order.

SEC. 18. Every order against non-resident, absent, or unknown defendants, shall be published in some newspaper printed in this territory, for eight weeks successively, the last insertion to be at least four weeks before the commencement of the term at which the defendants are required to appear.

Complainant may serve copy of bill out of territory.

SEC. 19. The complainant may cause a copy of the bill with a notice of the suit, to be delivered to any known defendant residing or being out of this territory, at any place within the United States or their territories, two months before the commencement of the term at which such defendant is required to appear.

Ib. Delivery how made, &c.

SEC. 20. Such delivery may be made by any white person above the age of twenty-one years, who is a competent witness in the cause, and being proved by the affidavit or deposition of such person, shall be as effectual as the service of the subpœna, and the delivery of a copy of the bill in this territory.

Proceedings where several absent defendants, not served.

SEC. 21. When there are several defendants, some of whom have not been served with process, and do not appear, the complainant may proceed against those, if any, who do appear, unless the court for good cause shall otherwise direct; or he may continue the cause, and proceed to bring in the other defendants by process or publication, as the case may require.

Time allowed defendant to plead after subpœna.

SEC. 22. If the subpœna shall have been served thirty days before the return day thereof, the defendant shall file his plea, demurrer or answer to the bill, on or before the third day of the term at which the process is returnable. If it shall have been served less than thirty days before such return day, the defendant shall file his plea, demurrer or answer, within thirty days next after such return day. In either case the court may, for just cause, allow the defendant further time to file the same.

Proceedings when defendant neglects to plead.

SEC. 23. If the defendant shall not file his plea, demurrer or answer within the time prescribed by the last section, the bill may be taken as confessed, and the court may thereupon, at its discretion, render a decree thereon, or order the complainant to prove the allegations in his bill, or examine him on oath, touching such allegations, and such decree shall then be made as the court shall deem just and equitable.

Interrogatories to complainant.

SEC. 24. The defendant, after he shall have filed his answer, may exhibit interrogatories to the complainant, which shall be answered by him on oath or affirmation, unless excepted to, and the exception allowed; and if the complainant shall not answer such interrogatories within the time appointed by the court, his bill may be dismissed with costs.

His answer, evidence

SEC. 25. The answer of the complainant to such interrogatories, shall be evidence in the cause, in the same manner as the answer of the defendant.

Answer to cross bill.

SEC. 26. If a cross bill be filed by the defendant, he shall put in his answer to the complainant's bill before the complainant shall be required to put in his answer to such cross bill.

Rules by consent to be entered.

SEC. 27. All rules, common or special, by consent of the parties or their solicitors, shall be entered of course with the clerk, whether in term time or vacation.

Amendments how allowed.

SEC. 28. All proper amendments shall be made, with or without costs, and on such equitable terms as the court may direct; and the court shall have the same power to allow amendments or the correction of mistakes, supply omissions or defects, extend the time within which an act may be done, and relieve a party from a judgment, decree, order or other proceeding, taken against him through his mistake, inadvertence, surprise or excusable neglect, and to allow any proceeding to be conformed to the provisions of the statute as in actions at law.

When at issue.

SEC. 19. Every cause in a court of chancery shall be deemed to be at issue on filing a replication, or at the expiration of the time therefor, if none be filed, nor further time allowed, and it shall not be necessary to issue a subpœna, or enter a rule to rejoin.

Issues of fact how tried.

SEC. 30. If there be an issue of fact, which shall render the intervention of a jury necessary, the court may direct an issue for the trial of the same, and the verdict shall be entered of record, and may be used on the hearing of the cause. In other cases, the court may order a reference, to take and report the proofs and evidence in the cause, or take them in open court in term time or in vacation.

Depositions how taken.

SEC. 31. Depositions may be taken, in cases in Chancery, in the same manner as is provided in actions at law; and the rules of evidence shall be the same in Chancery as at law.

Bill when dismissed.

SEC. 32. If the complainant shall not attend at the time appointed for the hearing of the cause, his bill may be dismissed with costs.

Proceedings if defendant does not appear.

SEC. 33. If the defendant shall not attend at the time appointed for the hearing of the cause, the bill, answer, replication, documents and proofs shall be read, the witnesses examined, and the court shall thereupon make such decree as it shall deem equitable and just, or dismiss the complainant's bill.

When complainant to give bond after decree.

SEC. 34. In cases where a decree shall be made upon any bill in equity against an absent defendant, the court, before issuing process to compel the performance of such decree against such absent defendant, may require the complainant to give bond, with such security and in such sum as it may direct, to abide such decree or order touching the restitution of the property of such absent defendant, or the repayment of any sum of money which the complainant may receive by virtue of such decree, but which shall afterwards be made to appear, as hereinafter provided, not to have been due to him; and in case no security shall be given, no process or execution shall issue to compel the performance of the decree so made against such absent defendant; but the property of such absent defendant may, by order of the court, be sequestered, under the direction of the court, to abide such order as it may think just and proper respecting the same.

When defendant may have decree opened.

SEC. 35. In case any such absent defendant, against whom a decree shall be made, his heirs, devisees, executors, administrators or assigns, as the case may require, shall, within one year after notice be given to him of such decree, or within three years after such decree shall have been made, if no notice, as aforesaid, shall have been given, petition the court touching the matter of such decree, and pay or secure, or cause to be paid, such costs as the court may think reasonable to order and direct; then, and in such case, the person aforesaid petitioning may be permitted to appear and answer the complainant's bill, and thereupon such proceedings shall be had, as if such absent defendant had appeared in due season, and no decree had been made; or such absent defendant may, within the times aforesaid, file his bill of review in the said court, for an account and settlement of the amount which was really due, and owing to the complainant at the time of the decree, to compel the complainant to refund what he may wrongfully have recovered and received, together with the interest from the time of the receipt thereof, with costs of suit, the former decree against such absent defendant notwithstanding; but in case no petition shall be presented, or bill filed, as before provided for, within one year from the time of notice, as aforesaid, shall be given, due proof thereof being made, or within three years from the decree, such decree shall be adjudged to be confirmed, which confirmation shall have relation to the time of making such decree; and the decree shall be executed and performed as in cases where the defendant had duly appeared.

When may file bill of review.

Rights of bona fide purchaser protected.

SEC. 36. The title to any real or personal property which shall have passed into the hands of a *bona fide* purchaser, by virtue of the former decree, shall not be affected by any proceedings under the last section.

Final decree.

SEC. 37. A final decree of a court of chancery shall have the same operation, force and effect from the time of signing the same, as a judgment at law.

Decree to be considered executed.

SEC. 38. When a decree shall be made for a conveyance, release, or acquittance in any court of chancery, and the party against whom any such decree shall pass, fails to comply therewith by the time appointed, such decree shall be considered and taken in all courts of law and equity, to have the same operation and effect, and be as available as if the conveyance, release or acquittal had been executed conformably to such decree.

Decrees, how enforced.

SEC. 39. A court of chancery, or a judge thereof in vacation, shall have power to enforce its decrees, orders and injunctions by attachment, sequestration, or by such process against the real or personal property, or against the person of any defendant, as the usages of Chancery allow; and such process shall be obeyed, executed and returned by the sheriff or other officer, to whom the same shall be directed, in like manner and under the same penalties, as is provided in cases of process issuing from a court of law.

Certain suits not to abate.

SEC. 40. When the cause of action shall survive, no suit in Chancery shall abate by the death of one or more of the complainants or defendants; but, upon satisfactory suggestion to the court, the cause shall proceed in favor of or against the surviving parties.

May abate as to some of the parties

SEC. 41. When one or more of the complainants or defendants shall die, and the cause of action shall not survive, the suit shall abate only as to the person or persons so dying, and the surviving parties may proceed without reviving the suit.

Bill of revivor.

SEC. 42. No bill of revivor shall be necessary to revive a suit against the representatives of a deceased defendant, but the court may, by order, direct the same to stand revived upon the petition of the complainant.

Order of revival to be served, &c

SEC. 43. A copy of such order shall be served upon the representatives against whom the revival is ordered, who shall be allowed thirty days after service, or such further time as the court may allow, to appear and answer, or disclaim.

Ib Proceedings if no answer.

SEC. 44. If they shall not, within the time prescribed in the last section, appear and answer or disclaim, the court, upon due proof of the service of such order, may cause their appearance to be entered, and, in such case, the answer of the deceased party shall be deemed the answer of such representatives.

Ib

SEC. 45. If no answer have been filed by the deceased party, the court may order the bill to be taken as confessed against such representatives, or compel them to answer by attachment or otherwise.

Husband, how made a party.

SEC. 46. If a female party to a suit marry at any time before a final decree, her husband may, on his application, be made a complainant or defendant with her, on the order of the court, in which the suit is pending, or the judge thereof, to be granted on due proof of the marriage, and after notice to such female party, and the other parties to the suit.

Ib., his privileges as party.

SEC. 47. Such husband may also be made a party with his wife, on the application of any other party to the suit, by petition, upon proof of the marriage, and notice to such husband and wife, and the other parties to the suit. In such cases the husband may contest all facts in the same manner as if he had originally been made a party.

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## TITLE II.

### *Writs of Ne Exeat.*

SEC 48. *Ne exeat*, by whom granted.
49 Proceedings to obtain *ne exeat*.
50 When *ne exeat* may be discharged

Ne exeat, how granted.

SEC. 48. The District Court, as a court of chancery, or any judge thereof in vacation, may grant writs of *ne exeat*, to prevent any person from going out of the territory, until he shall give security.

TITLE 3. Proceedings to obtain writ. SEC. 49. No writ of *ne exeat* shall be granted, but upon bill or petition filed, and affidavit of the complainant, or some other person, of the truth thereof; and the court or judge granting the writ, shall direct to be indorsed thereon, the amount of the security to be given to the defendant.

When writ may be discharged. SEC. 50. If the defendant shall, by answer or otherwise, satisfy the court or judge granting such writ of *ne exeat*, that there is no reason for his restraint, or shall give security for the performance of whatever decree may be made in the premises, the writ may be discharged.

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## TITLE III.

### *Of Granting Injunctions.*

SEC 51. Injunction, when to issue.
52. How granted.
53. Not to stay proceedings at law unless undertaking be given.
54. Proceedings when injunction for recovery of money has been dissolved.
55. Proceedings of sheriff, when execution debtor obtains injunction.

When to issue. SEC. 51. No writ of injunction shall be issued in any case, but upon bill or petition filed, verified by the oath of the person applying for such injunction, or by some competent witness.

How granted. SEC. 52. Writs of injunction may be granted by the court or a judge thereof in vacation; but no injunction shall issue in any case, until the complainant shall execute a bond or undertaking, with one or more sureties, in such sum as the court or judge shall deem sufficient, conditioned that the complainant will abide the decision which shall be made thereon, and pay all sums of money, damages and costs that may be adjudged against him, if the injunction should be dissolved.

Not to stay proceedings at law unless undertaking be given. SEC. 53. No injunction shall operate to stay proceedings at law, before or after judgment, until the party obtaining the same, shall give a bond or undertaking, with sufficient security, to be approved by the clerk of the court, in the amount required by the court or judge granting such injunction, for the payment of all moneys and costs due, or to become due from the complainant in such action, or judgment at law, and all moneys and costs that may be decreed against him in case such injunction shall be dissolved.

Proceedings when injunction for recovery of money has been dissolved. SEC. 54. In all cases where an injunction shall be allowed to stay proceedings at law, in an action for the recovery of money only, upon the dissolution of the injunction and dismissal of the bill, the court shall render a decree in favor of the defendant (plaintiff at law) for the debt, or damages, interest and costs, accruing in Chancery, together with five per centum penalty on the amount of debt or damages and interest.

Proceedings of sheriff when execution debtor obtains injunction. *SEC. 55. When a sheriff, or other officer, has received the whole or any part of the money, for the collection of which an execution has issued, and the person against whom such execution has issued, his executors or administrators, shall obtain an injunction to stay the proceedings under such execution, the sheriff or other officer shall repay to the person against whom such execution issued, his executors, administrators or attorney of record, the money so received, or such part thereof as may be enjoined, retaining sufficient to pay the costs of the collection by execution: *Provided*, The money has not been paid over to the plaintiff, his executors, administrators or attorney of record.

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## TITLE IV.

### *Of the Foreclosure of Mortgages.*

Sec. 56. When sale of premises may be decreed.
57 Payment of balance due after sale may be decreed.
58 No proceedings to be had at law during pendency of suit
59. Payment of balance by surety of mortgagee may be decreed
60 Proceedings at law to be stated in bill
61. In certain case, execution at law must have been returned
62. Sales of mortgaged premises, when, and by whom to be made.
63 Rights of redemption by mortgagor, or lien creditor after sale
64 Sheriff's deed, its effect, &c.
65. Proceeds of sale, how applied.
66. Surplus, when to be invested.
67 Defendant may dismiss bill, on paying portions, &c., &c.
68 Proceedings if payment made after decree of sale.
69 Proceedings if no payment made: when part of premises to be sold.
70 Proceedings to collect subsequent instalments.
71 In what cases the whole of mortgaged premises to be sold
72 Proceeds of sale, in such cases, how applied.

Sale of premises may be decreed

Sec. 56. Whenever a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage and costs of suit.

Payment of balance due after sale may be decreed.

Sec. 57. When a bill shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power not only to decree and compel the delivery of the possession of the premises to the purchaser thereof, but, on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the premises, in the cases in which such balance is recoverable at law; and for that purpose, may issue the necessary executions, as in other cases, against other property of the mortgagor.

How compelled.

No proceedings to be had at law during pendency of suit

Sec. 58. After such bill shall be filed, while the same is pending, and after a decree rendered thereon, no proceeding whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

Payment by surety of mortgagor.
9 Paige, 91.

Sec. 59. If the mortgage debt be secured by the obligation or other evidence of debt of any person other than the mortgagor, the complainant may make such other person a party to the bill, and the court may decree payment of the balance of such debt, remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

Sec. 60. Upon filing a bill for the foreclosure or satisfaction of

Bill to state proceedings at law. 4 Paige, 550; 8 do. 648.

a mortgage, the complainant shall state whether any proceedings have been had at law for the recovery of the debt secured thereby or any part thereof, and whether such debt, or any part thereof, has been collected or paid.

When execution must be returned. 4 Paige, 550.

SEC. 61. If it appear that any judgment has been obtained in a suit at law for the moneys demanded by such bill, or any part thereof, no proceedings shall be had in such case, unless to an execution against the property of the defendant in such judgment, the sheriff shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution, except the mortgaged premises.

Sales by whom and when to be made.

SEC. 62. All sales of mortgaged premises under the decree of a court of chancery, shall be made by the sheriff in the county where the premises, or some part of them are situated, unless otherwise directed in the decree of sale.

Ib. Rights of redemption by mortgagor or lien creditor after sale.

SEC. 63. Sales of mortgaged premises shall be made by the sheriff or other officer, in the same manner as other sales of real property on execution, unless otherwise directed by the court; and the mortgagor, or any lien creditor, shall have the same rights of redemption after a sale.

Sheriff's deed; its effects, etc.

SEC. 64. After the right of redemption shall have passed, deeds shall be executed by the sheriff or other officer, which shall vest in the purchaser the same estate, and no other or greater than would have vested in the mortgagee if the equity of redemption had been foreclosed; and such deeds shall be as valid as if executed by the mortgagor and mortgagee, and shall be an entire bar against either of them, and against all parties to the suit in which the decree for such sale was made, and against their heirs respectively, and all persons claiming under such heirs.

Proceeds of sale.

SEC. 65. The proceeds of every such sale, made under a decree in Chancery, shall be applied to the discharge of the debt adjudged by such court to be due, and of the costs awarded; and if there be any surplus, it shall be brought into court for the use of the defendant, or of the person entitled thereto, subject to the order of the court.

Surplus, when to be invested.

SEC. 66. If such surplus, or any part thereof, shall remain in the said court for the term of three months without being applied for, the district judge may direct the same to be put out at interest, subject to the order of the court, for the benefit of the defendant, his representatives or assigns, to be paid to them by the order of the court.

When bill to be dismissed on payment of sum due, &c. 2 Coms. 860.

SEC. 67. Whenever a bill shall be filed for the satisfaction or foreclosure of any mortgage, upon which there shall be due any interest, or any portion or instalment of the principal, and there shall be other portions or instalments to become due subsequently, the bill shall be dismissed, upon the defendant's bringing into court, at any time before the decree of sale, the principal and interest, with costs.

Proceedings to stay in certain cases.

SEC. 68. If after a decree of sale entered against a defendant in such case, he shall bring into court the principal and interest due, with costs, the proceedings in the suit shall be stayed, but the court shall enter a decree of foreclosure and sale, to be enforced by a further order of the court upon a subsequent default in the payment of any portion or instalment of the principal, or any interest thereafter to grow due.

When part of premises to be sold. 2 Paige, 302.

SEC. 69. If the defendant shall not bring into court the amount due, with costs, or if for any other cause a decree shall pass for the complainant, the court may direct a reference to a master to ascertain and report the situation of the mortgaged premises, or may determine the same on oral or other testimony: and if it shall appear that the same can be sold in parcels without injury to the interests of the parties, the decree shall direct so much of the mortgaged premises to be sold as will be sufficient to pay the amount then due on the mortgage, with costs: and such decree shall remain as security for any subsequent default.

Subsequent instalments, &c.

SEC. 70. If, in the case mentioned in the preceding section, there shall be any default subsequent to such decree, in the payment of any portion or instalment of the principal, or of any interest due upon such mortgage, the court may, upon petition of the complainant, by a further order founded upon such first decree, direct a sale of so much of the mortgage premises to be made under such decree, as will be sufficient to satisfy the amount so due, with the costs of such petition, and the subsequent proceedings thereon: and the same proceedings may be had as often as a default shall happen.

When whole of premises to be sold.

SEC. 71. If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for a sale of the whole premises accordingly.

Application of proceeds.

SEC. 72. In such case the proceeds of such sale shall be applied as well to the interest, portion or instalment, of the principal due, as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and if such residue do not bear interest, then the court may direct the same to be paid, with a deduction of the legal interest for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due with costs, to be put out at interest for the benefit of the complainant, to be paid to him as the instalments or portions of the principal, or the interest may become due, and the surplus for the benefit of the defendant, his representatives, or assigns, to be paid to them on the order of the court.

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## TITLE V.

### *Miscellaneous Provisions.*

SEC. 73. Master in Chancery, how appointed, his powers, compensation.
74. Receiver not to be appointed until after notice given.
75. Supreme Court may prescribe rules for Court of Chancery.
76. Appeals from Chancery to Supreme Court.
77. Act, when to take effect.

SEC. 73. Whenever it shall be deemed necessary, the court may

Master in Chancery, how appointed; his compensation

appoint a master in Chancery; such master shall be sworn and give bond, if required, for the faithful performance of the duties assigned him, and shall have power to administer oaths in any proceeding before him, and shall receive for his services such reasonable compensation as the court may allow.

Receiver how appointed.

SEC. 74. No receiver shall be appointed in any cause commenced or pending in Chancery, until after notice is given to the adverse party.

Supreme Court may prescribe rules for Chancery.

SEC. 75. It shall be lawful for the Supreme Court from time to time, to make, alter or amend, or revoke any rule of practice, so as to obviate doubts, advance justice and expedite suits in the courts of Chancery, so that the same be not contrary to the provisions of any statute.

Appeals from Chancery to Supreme Court

SEC. 76. Any person aggrieved by the final decision in a suit in equity, may appeal to the Supreme Court within the same time and under the same regulations as are prescribed for prosecuting writs of error at law, so far as the same may be applicable, but without impairing the general discretionary powers of courts of equity in cases of appeal.

Act when to take effect.

SEC. 77. This act shall take effect and be in force from and after the first day of May next.

*Passed January 23d*, 1854.

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## *AN ACT* TO DEFINE CRIMES AND MISDEMEANORS, AND REGULATE CRIMINAL PROCEEDINGS.

# CHAPTER I.

## OF CRIMES AND PUNISHMENTS.

SEC. 1. Crime or public offence defined.
2. Felony defined.
3. Misdemeanor defined.
4. All felonies and misdemeanors indictable, unless, &c.

Definition of crime.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That a crime or public offence, is an act or omission forbidden by law, and punishable by death, imprisonment, fine, removal from office, or disqualification to hold or enjoy any office of honor, trust or profit, under the laws of this territory.

Ib., of felony.

SEC. 2. A felony is a public offence punishable with death, or which is or may be punishable by imprisonment in the penitentiary.

Ib., of misdemeanor.

SEC. 3. Every other public offence is a misdemeanor.

Felonies and misdemeanors indictable.

SEC. 4. All felonies and misdemeanors are, unless some other express provision is made by law, indictable offences.

# CHAPTER II.

## OF RIGHTS OF PERSONS WHO ARE ACCUSED OF CRIMES AND OFFENCES.

SEC. 1. Person not held to answer except on presentment or indictment.
2 Rights of defendants in criminal actions.
3. Person not be convicted, except upon confession or verdict of jury.
4 No person held to answer a second indictment, &c.
5 Technical acquittal, not a bar to a second indictment.
6. Person not to be punished for crime, until after a legal conviction.

SECTION 1. No person shall be held to answer for a criminal offence, unless on the presentment or indictment of a grand jury; except in cases of impeachment, or in cases cognizable by justices of the peace, or arising in the army or militia, when in actual service, in times of war or public danger. Persons not held to answer unless on indictment or presentment.

SEC. 2. In all criminal prosecutions, the accused shall enjoy the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process to compel the attendance of witnesses in his behalf; and in prosecutions by indictment or information, to a speedy public trial, by an impartial jury of the county wherein the offence shall have been committed, except when the crime is committed on a lake, river, bay, sound, or other stream or body of water situate in two or more counties; or where the boundary line of counties are not distinctly marked out, and there is doubt as to the county in which the crime was committed; then the trial may be had in any county bordering on such lake, river, bay, sound, or other stream or body of water, and opposite the place where the crime was committed, or in either county having such uncertain boundaries. Rights of defendant.

SEC. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admiting the truth of the charge against him, by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court. Mode of conviction.

SEC. 4. No person shall be held to answer on a second indictment for an offence of which he has been acquitted by the jury, upon the facts and merits on a former trial; but such acquittal may be pleaded by him in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted. No person held to answer twice, etc.

SEC. 5. If any person indicted for an offence shall, on his trial, be acquitted upon the ground of a variance between the indictment and the proof, or upon any exception to the form, or to the substance of the indictment, he may be arraigned again on a new indictment, and he may be tried and convicted for the same offence, notwithstanding such former acquittal. Technical acquittal not a bar to second indictment.

SEC. 6. No person charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the case and of the person. Conviction to precede punishment.

# CHAPTER III.

## OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

SEC. 1. As to what constitutes murder in the first degree.
2 & 3. Murder in the second degree.
4. What proof of malice necessary to constitute murder.
5. Degree of guilt, how ascertained.
6. Homicides less than murder.
7. Justifiable homicide by public officers.
8. Justifiable homicide by individuals
9. Excusable homicide.
10. Verdict of not guilty to be rendered in certain cases.
11, 12, 13, 14 & 15. Manslaughter.
16. Punishment of manslaughter.
17. When person tried for murder, may be convicted of manslaughter.
18. Punishment of rape.
19. For compelling woman to marry.
20 Mayhem.
21. Killing in a duel, in territory.
22. Accessories to duel.
23 Principal, &c., for duelling out of territory.
24 Engaging in duel, challenging, &c
25. Accepting, carrying a challenge, &c
26. Posting another, &c.
27. Being armed and beating another with cowhide.
28. Assault, with intent to commit murder.
29. Attempt to poison.
30. Robbing, being armed.
31. Assault, with intent to rob, &c, being armed.
32. Robbing, not being armed.
33. Attempt to rob, not being armed
34. Attempting to extort money by threats.

Murder in the first degree.

SEC. 1. If any person shall purposely, and of deliberate and premeditated malice, or in the perpetration, or attempt to perpetrate, any rape, arson, robbery or burglary, kill another, every such person shall be deemed guilty of murder in the first degree, and upon conviction thereof, shall suffer death.

Ib. Second degree.

SEC. 2. If any person shall, purposely and maliciously, but without deliberation and premeditation; or being engaged in the commission of any felony, other than rape, arson, burglary and robbery, without any desire to effect death, kill another, every such person shall be deemed guilty of murder in the second degree, and on conviction thereof, shall be imprisoned in the penitentiary, and kept at hard labor during life.

Ib.

SEC. 3. If any person shall, by an act, imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death of any particular individual, kill another, such person shall be guilty of murder in the second degree, and shall, upon conviction, be imprisoned in the penitentiary, and kept at hard labor during life.

What proof of malice necessary to constitute murder.

SEC. 4. There shall be some other evidence of malice, than the mere proof of the killing, to constitute murder in the first or second degree, unless the killing was effected in the committing, or attempting to commit a felony; and deliberation and premeditation, when necessary to constitute murder in the first degree, shall be evidenced by poisoning, lying in wait, or some other express proof that the design was formed and matured in cool blood, and not hastily upon the occasion.

Degree of guilt, how ascertained.

SEC. 5. Upon the trial of an indictment for murder, the jury, if they find the defendant guilty, shall inquire and by their verdict ascertain whether he be guilty of murder in the first or second degree; but if such defendant be convicted upon his own confession in open court, the court shall proceed, by examination of witnesses, to determine the degree of murder, and award sentence accordingly.

Homicides less than murder.

SEC. 6. The killing of a human being by the act, procurement, or omission of another, in cases where such killing shall not be murder, according to the provisions of this chapter, is either justifiable or excusable homicide, or manslaughter.

Justifiable homicide by officers.

SEC. 7. Such homicide is justifiable when committed by public officers, and those acting by their command in their aid and assistance, either:

1 In obedience to any judgment of a competent court; or

2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty; or,

3. When necessarily committed in retaking felons who have been rescued or who have escaped; or,

4. When necessarily committed in arresting felons fleeing from justice.

Ib., by individuals.
2 Coms. 193.

SEC. 8. Such homicide is also justifiable when committed by any person in either of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in any dwelling-house in which such person shall be;

2. When committed in a lawful defence of such person, or of his or her husband, wife, parent, child, master, mistress, or servant, when there shall be a reasonable ground to apprehend a design to commit a felony, or to do some great personal injury, and there shall be imminent danger of such design being accomplished;

3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person, for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping and preserving the peace.

Excusable homicides.

SEC. 9. Such homicide is excusable when committed:

1. By accident and misfortune, in lawfully correcting a child or servant; or in doing any other lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent; or,

2. By accident and misfortune in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantage having been taken, and without any dangerous weapon being used, and not done in a cruel and unusual manner.

Verdict of not guilty in certain cases.

SEC. 10. Whenever it shall appear to the jury, on the trial of any person indicted for murder or manslaughter, that the alleged homicide was committed under circumstances, or in cases where, by law, such homicide was justifiable or excusable, the jury shall render a general verdict of not guilty.

CHAP. 3.

Mansla'ghter

SEC. 11. Manslaughter shall consist in the unlawful killing of a human being, without malice express or implied, and without any mixture of deliberation. It must be voluntary, upon a sudden heat of passion, caused by a provocation apparently sufficient to make the passion irresistible; or involuntary, in the commission of an unlawful act, or a lawful act, without due caution or circumspection.

Ib.

SEC. 12. Every person deliberately assisting another in the commission of self-murder, shall be deemed guilty of manslaughter.

Ib. 2 Barb 216

SEC. 13. Any person who shall administer to any woman pregnant with a quick child, or prescribe for any such woman, or advise or procure any such woman to take any medicine, drug or substance whatever, or shall use or employ any instrument or other means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, shall, in case the death of such child, or of such mother, be thereby produced, be deemed guilty of manslaughter.

Ib.

SEC. 14. If any physician, while in a state of intoxication, shall without a design to effect death, administer any poison, drug or medicine, or do any other act to another person which shall produce the death of such other person, he shall be deemed guilty of manslaughter.

Ib.

SEC. 15. Every other killing of a human being by the act, procurement, or culpable negligence of another, when such killing is not justifiable or excusable, or is not declared in this chapter to be murder, shall be deemed manslaughter.

Ib.

SEC. 16. Any person convicted of manslaughter shall be punished by imprisonment in the penitentiary not less than one nor more than ten years, and by fine not exceeding five thousand dollars.

When person tried for murder may be convicted of manslaughter.

SEC. 17. Any person may be convicted of manslaughter under an indictment for murder, if the evidence fail to prove the latter, and establishes the former offence.

Rape.

SEC. 18. Any person who shall be convicted of a rape, either:

1. By carnally and unlawfully knowing any female child under the age of ten years; or,

2. By forcibly ravishing any woman of the age of ten years or upwards, shall be punished by imprisonment in the penitentiary not more than twenty, nor less than three years; and if the rape shall have been committed upon a sister or a daughter, then the imprisonment shall be for life.

Compelling woman to marry, &c.

SEC. 19. Any person who shall take any woman unlawfully, against her will, and by force, menace, or duress, compel her to marry him, or to marry any other person, or to be defiled, upon conviction thereof, shall be punished by imprisonment in the penitentiary not less than one, nor more than seven years.

Mayhem.

SEC. 20. Every person who, from premeditated design, evinced by laying in wait for the purpose, or in any other manner; or with intention to kill, or commit any felony, shall:

1. Cut out or disable the tongue; or
2. Put out an eye; or,
3. Slit the lip, or slit or destroy the nose; or,
4. Cut off or disable any limb or member, on purpose, upon conviction thereof, shall be imprisoned in the penitentiary, not less than one or more than twenty years.

Killing in a duel.

SEC. 21. Every person who shall, by previous engagement or appointment, fight a duel within the jurisdiction of this territory, and in so doing shall inflict a wound upon any person, whereof the person so injured shall die, shall be deemed guilty of murder in the second degree.

Accessories

SEC. 22. Every person who shall have been the second of either party, in such duel, as is mentioned in the preceding section, and shall have been present when such wound shall have been inflicted, whereof death shall ensue, shall be deemed to be an accessory before the fact, to the crime of murder in the second degree.

Duel out of territory.

SEC. 23. Every person who shall fight a duel, or act as second or surgeon at the same, by previous arrangement, without this territory, shall be incapable of voting or holding any office in this territory, thereafter.

Engaging in duel, challenging, etc

SEC. 24. Any person who shall engage in a duel with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any verbal or written message, purporting or intending to be such challenge, although no duel ensue, shall be punished by imprisonment in the penitentiary, not more than ten nor less than two years, and shall be incapable of voting or holding any office of trust or profit under the laws of this territory.

Accepting or carrying challenge, etc.

SEC. 25. Every person who shall accept such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel ensue or not; and every person who shall be present at the fighting of a duel with deadly weapons, as an aid, second or surgeon, or who shall advise, encourage or promote such duel, shall be liable to imprisonment in the penitentiary not less than one nor more than two years.

Posting another, etc.

SEC. 26. If any person shall post another, or in writing or print, shall use any reproachful and contemptuous language to, or concerning another for not fighting a duel, or for not sending or accepting a challenge, he shall be liable to imprisonment in the penitentiary, not more than one year nor less than six months.

Armed person beating another with cowhide

SEC. 27. If any person shall assault and beat another with a cowhide, stick or whip, having at the time in his possession a pistol or other deadly weapon, with intent to intimidate and prevent the person assaulted from defending himself, such person shall, on conviction, be imprisoned in the penitentiary not less than one, or more than ten years.

Assault with intent to commit murder

SEC. 28. If any person shall assault another with intent to murder or to maim, or to disfigure his person in any way, or to commit a rape, he shall be liable to imprisonment in the penitentiary not more than five years, nor less than one year, and by fine not exceeding one thousand nor less than one hundred dollars.

Attempt to poison.

SEC. 29. If any person shall attempt to commit the crime of murder, by poisoning, or by any other means not constituting an assault with intent to murder, every such offender, upon conviction thereof, shall be punished by imprisonment in the penitentiary, not less than one, nor more than ten years.

Robbing, being armed.

SEC. 30. If any person shall assault another, and shall feloniously rob, steal and take from his person, any money, or other property which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if being so armed, he shall wound or strike the person robbed, he shall be liable to punishment by imprisonment in the penitentiary not more than ten, nor less than three years.

Assault with intent to rob, etc., being armed.

SEC. 31. If any person, armed with a dangerous weapon, shall assault another with intent to rob or murder, upon conviction, he shall suffer imprisonment in the penitentiary not more than five years, nor less than one year.

Robbing, not being armed.

SEC. 32. If any person shall, by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another, any money or other property which may be the subject of larceny, such robber not being armed with a dangerous weapon, shall be liable to punishment by imprisonment in the penitentiary not more than three years, nor less than one year.

Attempt to rob, not being armed.

SEC. 33. If any person not armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or steal, he shall be subject to punishment by imprisonment in the penitentiary not more than two years, nor less than six months.

Attempt to extort by threats, etc.
2 Barb. 429.

SEC. 34. If any person, either verbally or by any written or printed communication, shall maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever; or to compel the person so threatened to do any act against his will, he shall be punished, upon conviction, by imprisonment, not more than one year, nor less than six months, and by a fine not exceeding five hundred, nor less than one hundred dollars.

## CHAPTER IV.

### OF OFFENCES AGAINST PROPERTY.

SEC. 1. Burning dwelling in night time.
2. Burning dwelling in day time.
3. Burning church, court house, vessel, &c., in night time.
4. Burning same in day time.
5. Burning or attempting to burn certain buildings day or night.
6. Burning lumber, hay, &c., day or night.
7. Married woman liable.
8. Burglary, being armed or making assault.
9. Burglary, not being armed or making assault.
10. Breaking in office, &c, at night.
11. Entering house at night, &c., without breaking, &c.
12. Larceny in dwelling-house, &c.

SEC. 13. Simple larceny, exceeding $35.
14. Stealing horse, mule, &c.
15 For defacing mark on cattle.
16 Jurisdiction of justice in larcenies
17. Buying and receiving stolen property.
18. Jurisdiction of justice of peace in case of buying, &c, stolen property.
19 Not necessary in prosecuting to aver principal's conviction.
20. Officer arresting to secure goods.
21 Prosecutor and officer to be paid
22 Embezzlement by clerks, agents, &c
23. Embezzlement by carriers, &c.
24. Embezzlement or fraudulently selling by warehousemen, &c
25 Embezzlement or loaning, &c, of public moneys by officers and others
26. Punishment for embezzling public money.
27 Public moneys when to be paid over; officer cannot set off private demand
28. Uttering false receipt by warehousemen, millers, &c
29 Falsely personating another
30 Obtaining goods, &c, under false pretence
31 Frauds at common law, how punishable
32. Maliciously killing or maiming cattle, injuring property, &c.
33 Selling lands without title.
34 Malicious injury to mill dams, &c.
35 Malicious injury to bridges.
36 Maliciously burning prairies, woods, &c
37. Maliciously injuring fruit or ornamental trees, fences, crops, &c.
38. Malicious injury to monuments, guide boards, &c.
39 Trespassing in gardens, improved land, &c.
40. Jurisdiction of justice.

Burning dwelling in night time.

SEC. 1. Any person who shall maliciously and wilfully burn, in the night time, the dwelling-house of another, or shall, in the night time, wilfully and maliciously set on fire any other building, owned by himself or another, by the burning whereof such dwelling-house shall be burned in the night time, shall suffer the same punishment provided for the crime of murder in the second degree; but if, at the time of committing the offence, there were no person lawfully residing in the dwelling-house so burned, he shall be subject to imprisonment in the penitentiary not more than ten, nor less than three years.

Ib. In day time.

SEC. 2. Every person who shall wilfully and maliciously burn, in the day time, the dwelling-house of another, or any building adjoining such dwelling, and shall wilfully and maliciously set fire to any building owned by himself or another, by the burning whereof such dwelling-house shall be burned in the day time, or shall in the day time wilfully and maliciously set on fire any building owned by himself or another, by the burning whereof such dwelling-house shall be burned in the night time, shall be liable to imprisonment in the penitentiary not more than fifteen, nor less than five years.

Burning church, court-house, vessel, &c., in night time

SEC. 3. Any person who shall wilfully and maliciously burn in the night time, any meeting-house, church, court-house, town-house, college, academy, jail, or other building erected for public uses, or any steamboat, ship or other vessel, or any express office, warehouse, store, manufactory or mill of another, or any barn, stable, shop or office of another, within the curtilage of any dwelling-house or any other building, by the burning whereof any building mentioned in this section shall be burned in the night time, shall be subject to punishment by imprisonment in the penitentiary not more than fifteen, nor less than five years.

Ib. In day time.

SEC. 4. Every person who shall wilfully and maliciously burn in the day time, any building mentioned in the next preceding section, the punishment for which, if burned in the night time, would be imprisonment in the penitentiary not more than fifteen nor less than five years, shall be punished by imprisonment in the penitentiary not more than eight, nor less than four years.

Attempting to burn certain buildings, &c., day or night.

SEC. 5. Every person who shall wilfully and maliciously burn any building whatsoever of another, other than are mentioned in the preceding sections of this act, or any bridge, lock, dam or flume, shall be liable to imprisonment in the penitentiary not more than eight nor less than four years; and every person who shall make an unsuccessful attempt to commit either of the offences mentioned in this or the preceding sections of this chapter, shall be liable to imprisonment in the penitentiary for a term not exceeding five years, nor less than one year.

Ib. Lumber, hay, &c.

SEC. 6. Every person who shall wilfully and maliciously burn any pile or parcel of boards, timber, or other lumber, or any stack of hay, grain or other vegetable product, severed from the soil, but not stacked, or any standing grain, grass or other standing product of the soil, shall be subject to imprisonment in the penitentiary not more than two years, nor less than six months.

Married woman liable.

SEC. 7. The preceding sections shall severally extend to a married woman who may commit either of the offences therein described, though the property burned or set on fire may belong partly or wholly to her husband.

Burglary, being armed or making assault.

SEC. 8. Every person who shall break and enter any dwelling-house in the night time, with the intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or after having entered with such intent, shall break any such dwelling-house in the night time, any person then being lawfully therein, and the offender being armed with a dangerous weapon, at the time of such breaking or entering, or so arming himself in such house, or making any actual assault on any person lawfully therein, shall be liable to punishment by imprisonment in the penitentiary, not more than twelve, nor less than four years.

Burglary, not being armed or making assault.

SEC. 9. Every person who shall break and enter a dwelling-house in the night time, with such intent as is mentioned in the last preceding section, or who, having entered with such intent, shall break such dwelling-house in the night time, the offender not being armed, nor arming himself in such house with a dangerous weapon, nor making an assault upon any person being then lawfully therein, shall be liable to imprisonment in the penitentiary not more than five, nor less than two years.

Breaking into office, &c., at night.

SEC. 10. Every person, who shall break and enter, in the night time, any office, shop, or warehouse, not adjoining to, or occupied with a dwelling-house, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or any other felony, upon conviction, shall be punished by imprisonment in the penitentiary, not more than five years nor less than one year.

Entering house at night, &c., without breaking, &c.

SEC. 11. Every person who shall enter in the night time without breaking, or shall break and enter in the day time, any dwelling-house or out-house thereto adjoining, and occupied therewith, or any office, shop, store or warehouse, or any ship, steamboat or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny or other felony, upon conviction, shall be punished by imprisonment in the penitentiary not more than three years, nor less than six months.

Larceny in dwelling-house, &c.

SEC. 12. Every person who shall commit the crime of larceny in any dwelling-house, office, shop, warehouse, store, ship, steamboat or vessel, or shall break or enter in the night time, or day time, any meeting-house, church, court-house, town-house, college, academy or other public buildings erected for public use, and steal therein, upon conviction, shall be punished by imprisonment in the penitentiary not more than seven years, nor less than one year, or by fine not exceeding five hundred dollars.

Simple larceny, exceeding $35.

SEC. 13. Every person who shall commit the crime of larceny, by stealing the property of another, any money, goods, chattels, or any bank note, bond, promissory note, bill of exchange or other bill, order or certificate, or any book of accounts for, or concerning money or goods due, or to become due, or to be delivered, or any deed or writing containing a conveyance of land, or any other valuable contract in force, or any receipt, release or defeasance, or any writ, process or public record, if the property stolen shall exceed the value of thirty-five dollars, shall be liable to punishment by imprisonment in the penitentiary not more than five years, nor less than one year; that if any person shall steal any money, or other personal goods, or chattels, the property of another—the value of thirty-five dollars or less—the person so offending, shall, upon conviction thereof, be fined in any sum not to exceed two hundred dollars, to be paid into the treasury of the county in which the crime is committed; and shall be liable to confinement in the county jail, at the discretion of the court, not to exceed twenty days.

Stealing horse, mule, &c.

SEC. 14. Every person who shall commit the crime of larceny, by stealing any horse, mare, gelding, foal or mule, of any value, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than fifteen, nor less than three years.

Defacing mark on cattle.

SEC. 15. If any person shall wilfully and knowingly make, alter, or deface, any artificial earmark or brand upon any horse, mare, gelding, foal, mule, ass, sheep, goat, swine, bull, cow, steer or heifer, the property of another, intending thereby to convert the same to his own use, he shall be deemed guilty of larceny, and, upon conviction thereof, shall be punished by imprisonment in the penitentiary not more than five years, nor less than one year.

Jurisdiction of justice of peace.

SEC. 16. Every justice of the peace shall have jurisdiction concurrent with the District Court, of all the larcenies mentioned in the next preceding section of this chapter, when the money or property stolen shall be alleged to exceed ten, and less than twenty dollars; and exclusive jurisdiction of all larcenies whatever, when the money or other property stolen shall not be alleged to exceed the value of ten dollars, in all which cases, the punishment shall be by fine not exceeding fifty, nor less than ten dollars, or by imprisonment in the county jail for the term of three months, saving to every person who shall be convicted before the justice, the right to appeal, as in other cases.

Buying, receiving, &c., stolen property. 12 Wen. 76; 3 Hill, 196.

SEC. 17. Every person who shall buy, receive, or aid in the concealment of stolen property, money or goods, knowing the same to have been stolen, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than four years, nor less than one year, or by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than one hundred dollars.

Jurisdiction of justice.

SEC. 18. Every justice of the peace shall have jurisdiction concurrent with the District Court, or exclusive, as before provided, of all offences of buying, receiving or aiding in the concealment of stolen goods, or other property, in all cases in which they would have jurisdiction of a larceny of the same goods, or other property; and the punishment of buying, receiving or aiding in the concealment of such goods or other property, shall be the same as in a case of a larceny of the same goods or other property, with the same right of appeal, on conviction.

Not necessary to aver principal's conviction.

SEC. 19. In any prosecution for the offence of buying, receiving or aiding in the concealment of stolen money or other property, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

Officer arresting to secure goods.

SEC. 20. The officer who shall arrest any person charged as principal or accessory in any robbery or larceny, shall, if he be able, secure the property alleged to have been stolen, and shall be answerable for the same; and he shall annex a schedule thereof to his return of the warrant, and upon the conviction of the offender, the stolen property shall be restored to the owner.

Prosecutor and officer to be paid.

SEC. 21. Upon any conviction of burglary, robbery or larceny, the court may order a suitable recompense to the prosecutor, and also to the officer who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer.

Embezzlement, 10 Wen. 298; 5 do 150, 581; 1 Denio, 76

SEC. 22. If any officer, agent, clerk, or servant of any incorporated company, or if any clerk, agent, or servant of any private person, or of any co-partnership, except apprentices and other persons under the age of sixteen years, shall embezzle or fraudulently convert to his own use, or shall take and secrete, with the intent to embezzle and convert to his own use, without consent of his employers or master, any money or property of another, which shall have come into his possession, or be under his care, by virtue of such employment, he shall be deemed, by so doing, to have committed the crime of larceny.

Embezzlement by carriers, &c.

SEC. 23. If any carrier, or other person to whom any money, goods, or other property which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person, who shall have been entrusted with such property, shall embezzle, or fraudulently convert to his own use, or shall secrete, with intent to embezzle and convert to his own use, any money, goods, or property, either in the mass, as the same were delivered, or otherwise, and before delivery of such money, goods, or property, at the places where, or to the persons to whom they were to be delivered, he shall be deemed to have committed the crime of larceny.

Embezzlement, &c., by warehousemen, &c.

SEC. 24. Any warehouseman, storage, forwarding, commission merchant, or miller, or his or their agents, clerks, or servants, who shall embezzle or fraudulently convert to his or their own use, or fraudulently sell or otherwise dispose of, for their or his own gain, profit, or advantage, without the consent of the owner thereof, any grain, flour, pork, beef, wool, or other goods, wares or merchandise, which shall have been received by such warehouseman, miller, or storage, forwarding or commission merchant, to be stored for hire or for any other purpose, shall be deemed to have committed the crime of larceny.

Embezzlement or loaning, &c., of public moneys by officers and others.

SEC. 25 If any person, having in his possession any money belonging to this territory, or any county, town, city, or other municipal corporation or school district; or in which this territory, or any county, town, city, village, or corporation or school district has any interest; or if any collector or treasurer of any county, incorporated city, town or village, or school district, or the treasurer or other disbursing officer of the territory, or any other person holding an office under any law of this territory, or any officer of any incorporated company, who now is, by virtue of his office, or shall hereafter be entrusted with the collection, safe keeping, receipt, transfer, or disbursement of any tax, revenue, fine, or other money, shall convert to his own use, in any way or manner whatever, any part thereof, or shall loan, with or without interest, any portion of the money entrusted to him as aforesaid, or who shall wilfully neglect or refuse to pay over the same or any part thereof, according to the provisions of law, so that he shall not be able to meet the demands of any person lawfully demanding the same, whether such demand be made before or after the expiration of his office, he shall be deemed and adjudged guilty of an embezzlement.

Punishment for embezzling public money.

SEC. 26. Any person who shall be deemed guilty of embezzling any money, prohibited by the last preceding section, not exceeding in amount the sum of one hundred dollars, shall, upon conviction thereof, be punished by imprisonment in the county jail not more than twelve, nor less than three months; and any person convicted of embezzling a greater sum than one hundred dollars, shall be punished by imprisonment in the penitentiary not more than three years, nor less than one year, and by a fine in each case of twice the amount so embezzled; and if the court cannot determine, from the verdict of the jury, or otherwise, the amount of the sum embezzled, they shall impose such fine as in their discretion shall be adequate, and corresponding as nearly as possible with the penalty imposed by this section; and any refusal by an officer to pay any sum lawfully demanded, shall be deemed an embezzlement of the same so demanded.

Officer cannot set off private demand: public moneys when to be paid over.

SEC. 27. No officer or other person mentioned in the twenty-fifth section of this chapter, shall be permitted to set up any private demand, as a set-off against any money he may have received by virtue of his office; and all justices of the peace, clerks of the District Court, sheriffs and other officers, shall pay into the respective treasuries all the moneys collected on fines, within thirty days after said moneys shall have been collected.

False receipt &c., by warehousemen, millers, &c.

SEC. 28. If any warehouseman, miller, or storage, forwarding, or commission merchant, or his or their servants, agents or clerks, shall wilfully and fraudulently make or utter any receipt or other written evidence of the delivery into any warehouse, mill, store, or other building belonging to him, them or either of them, or his or their employers, of any grain, flour, pork, beef or wool, or other goods, wares, or merchandise, which shall not have been so received, or delivered into such mill, warehouse, store, or other building, previous to the making and uttering of such receipt, or other written evidence thereof, upon conviction thereof, shall be punished by imprisonment in the penitentiary not more than two years, nor less than one year.

Falsely personating another.

SEC. 29. Every person who shall falsely represent or personate another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed, by so doing, to have committed the crime of larceny.

False pretence. 12 J. R. 292, 14 do. 371; 9 Cow. 578; 9 Wen. 190; 11 do. 18; 13 do. 311, 14 do. 31, 560; 17 do. 541.(a)

SEC. 30. If any person shall designedly, by any false pretence, or by any privy, or false token, and with intent to defraud, obtain from any other person any money, or goods, wares or merchandise, or shall obtain, with such intent, the signature of any person to any written instrument, the false making whereof would be punishable as forgery, he shall be subject to imprisonment in the penitentiary not more than five years, nor less than one year.

Frauds at common law

SEC. 31. Any person convicted of any gross fraud or cheat at common law, shall be punished by fine not exceeding one thousand, nor less than fifty dollars, and the party committing such fraud shall be liable to the party defrauded in double damages.

Maliciously killing or maiming cattle, or injuring personal property.

SEC. 32. Every person who shall wilfully and maliciously kill, maim, or disfigure any horse, cow, ox, sheep, or other beast of another person; or shall wilfully and maliciously administer poison to any such beasts, or expose any poisonous substance with intent that the same may be taken or swallowed by them; or shall wilfully and maliciously destroy or injure the personal property of another, in any manner, by any means, not particularly mentioned or described in this chapter, upon conviction thereof, shall be punished by imprisonment in the county jail not more than two years, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars.

Selling lands without title.

SEC. 33. If any person shall falsely and fraudulently represent that he is the owner of any parcel or tract of land to which he has no title, and shall execute any deed of the same, with intent to de-

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(a] 25 Wen. 399; 1 Hill, 317; 3 do 170; 4 do 12, 127; 4 Denio, 153; 4 Barb. 152; 1 Comst. 173

fraud any person whatever, he shall, upon conviction thereof, be imprisoned in the penitentiary not more than two years, nor less than six months.

Injuring mill dams, &c.

SEC. 34. Every person who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash boards or other appurtenances thereof, or of the wheels, mill gear, or machinery of any mill; or shall wilfully or wantonly, and without color of right, draw off the water contained in any mill pond, reservoir, canal or trench, shall, upon conviction thereof, be punished by imprisonment in the penitentiary not more than two years, nor less than six months, or by fine not not exceeding four hundred, nor less than fifty dollars.

Injuries to bridges, roads, &c.

SEC. 35. Every person, who shall wilfully or maliciously break down, injure, remove or destroy any public or toll bridge, railroad, or plank road, or any turnpike or plank road gate, or any lock, culvert, or embankment of any canal, or shall maliciously, or wilfully make any aperture or breach in any such embankment, with intent to destroy or injure the same, upon conviction shall be imprisoned in the penitentiary for not more than three years, nor less than six months, or pay a fine not exceeding six hundred, nor less than fifty dollars.

Burning woods, prairies, &c.

SEC. 36. If any person shall wilfully and maliciously set on fire, any woods, prairie or other grounds, other than his own, or shall intentionally, or by neglect, permit the fire to pass his own premises or grounds, to the injury of any other person or persons, every person so offending, shall, on conviction thereof, for every such offence, be fined in a sum not exceeding five hundred, nor less than ten dollars.

Injuring fruit or ornamental trees, &c.

SEC. 37. Every person who shall wilfully and maliciously, or wantonly and without cause, cut down and destroy, or by girdling, lopping or otherwise, shall injure any fruit tree or any other trees not his own, standing or growing for shade, ornament, or other useful purposes; or shall maliciously or wantonly break the glass, or any part of it, in any building not his own; or shall maliciously break down any fence belonging to or enclosing land not his own; or shall maliciously throw down or open any bars, gate or fence, and leave the same down or open; or shall maliciously and injuriously sever from the freehold of another any produce thereof, or anything attached thereto, shall, upon conviction, be imprisoned in the county jail not more than one year, nor less than three months, or pay a fine not exceeding two hundred, nor less than ten dollars.

Injuring monuments, guide boards &c.

SEC. 38. Every person who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any tract or lot of land, or any tree marked for that purpose; or shall so break down, injure, remove or destroy any mile stone, mile board, or guide board erected upon any highway or other public way, turnpike, railroad or plank road; or shall wilfully or maliciously deface or alter the inscription on any such stone or board; or shall wilfully or maliciously mar or deface any building or any sign board, or shall extinguish any lamp, or break or remove any lamp or lamp post, or any railing or post erected on any bridge, sidewalk, street, highway, court or passage, shall, upon conviction, be punished by fine not exceeding five hundred, nor less than fifty dollars, or by imprisonment in the county jail, not more than six, nor less than three months.

Trespass on improved lands.

SEC. 39. Every person who shall wilfully commit any trespass by entering upon the garden, orchard, or other improved land of another, without permission from the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall, upon conviction, be punished by fine not exceeding fifty, nor less than three dollars.

Jurisdiction of justice.

SEC. 40. Every justice of the peace shall have concurrent jurisdiction in his own county, with the District Court, of all offences mentioned in the last three preceding sections of this chapter, when the value of the trees, fruit, grain or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass shall not exceed the sum of one hundred dollars, and in such case the punishment shall be by fine not exceeding one hundred, nor less than three dollars.

## CHAPTER V.

### OF FORGERY AND COUNTERFEITING.

SEC. 1. Forgery of records, deeds, &c.
2. Uttering forged records or instruments.
3. Forging notes, &c., issued by officer.
4. Forging bank notes, &c.
5. Having counterfeit bills in possession, with intent to pass.
6. Passing counterfeit bills, &c.
7. Making or having tools, &c., for counterfeiting.
8. Testimony of president, &c, of banks, may be dispensed with.
9. Sworn certificate of certain officers, evidence.
10. Fraudulently joining instruments, &c.
11. Affixing fictitious signature.
12. In indictment for forgery what allegation sufficient.
13. Counterfeiting coin or having same in possession, with intent, &c.
14. Making or keeping dies, moulds, &c, for coining.
15. Punishment on conviction of second offence.

Forgery of records, deeds, &c.

SEC. 1. Every person who shall falsely make, alter, forge, or counterfeit any public record, or any certificate, return, or attestation of any clerk of the court, register, notary public, justice of the peace, or any other public officer, in relation to any matter wherein such certificate, return, or attestation may be received as legal proof; or any charter, deed, will, testament, bond, writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance, or discharge for money or other property, or any acceptance of a bill of exchange, indorsement or assignment of a bill of exchange, promissory note, or any accountable receipt for money, goods, or other property, with intent to injure or defraud any person, upon conviction, shall be punished by imprisonment in the penitentiary not more than ten, nor less than two years, or by fine, of not more than ten thousand, nor less than one hundred dollars.

Uttering forged record, &c

SEC. 2. Every person who shall utter and publish as true, any false, forged, or altered record, deed, instrument, or other writing, mentioned in the next preceding section, knowing the same to be false, forged, or altered, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten years nor less than one year.

Forging notes, etc., issued by officer.

SEC. 3. Every person who shall falsely make, alter, forge or counterfeit any note, issued by any commissioner or other officer authorized to issue the same, for any debt of this territory, with intent to injure or defraud as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten nor less than three years.

Ib Bank notes, etc.

SEC. 4. Every person who shall make, alter, forge or counterfeit any bank bill, promissory note, draft or other evidence of debt, issued by any corporation or company, duly authorized for that purpose by the laws of the United States, of any state of the United States, of this territory, or of any territory of the United States, or of any other state, government or country, with intent to injure or defraud, shall, upon conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

Having counterfeit notes in possession 21 Wen 809

SEC. 5. Every person who shall have in his possession any forged, counterfeit or altered bank bill, promissory note, draft or other evidence of debt, issued or purporting to have been issued, as is mentioned in the next preceding section, with intent to utter the same as true or false, knowing the same to have been so forged, counterfeited or altered, as aforesaid, shall, upon conviction, be punished by imprisonment in the penitentiary not more than five years, nor less than one year.

Passing counterfeit notes, etc.

SEC. 6. Every person who shall utter or pass, or tender in payment as true, any false, altered, forged or counterfeit note, certificate, or bill of credit, for any debt of this territory, or bank bill, promissory note, draft or other evidence of debt, issued or purporting to have been issued, as is mentioned in the fourth section of this chapter, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year.

Making or having tools, etc., for counterfeiting, with intent, etc.

SEC. 7. Every person who shall engrave, make or begin to engrave, make or mend any plate, block, press or other tool, instrument or other implement, or shall make or provide any paper or other materials adapted and designed for the forging or making any false and counterfeit note, certificate or other bill of credit, in the similitude of the notes, certificates or bills of credit, issued by lawful authority for any debt of this territory, or any false, counterfeit note or bill in the similitude of the notes or bills issued by any bank or banking company established within the United States, or any territory thereof, or within any other government or country;

and every person who shall have in his possession any such plate or block engraved in any part, or any press or other tool, instrument or implement, paper or other material adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used in forging or making any such false and forged certificates, bills or notes, shall, on conviction, be punished by imprisonment in the penitentiary not more than five years, nor less than one year, or by a fine of not more than five thousand nor less than five hundred dollars.

**Testimony of president, etc., of bank, when dispensed with**

SEC. 8. In all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for uttering, publishing or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof with the intent to utter and pass them as true, the testimony of the president and cashier of such banks may be dispensed with, and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and false bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit.

**Sworn certificate of certain officers, evidence.**

SEC. 9. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit, or security issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit, or security, or for being possessed thereof, with intent to utter and pass the same as true, the certificate, under oath, of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such note, certificate, bill of credit, or security, purports to have been issued, shall be admitted as evidence, for the purpose of proving the same to be forged or counterfeited.

**Fraudulently joining instruments, etc.**

SEC. 10. If any person shall fraudulently connect together different parts of several bank notes, or other genuine instruments, in such manner as to produce an additional note, or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery, in like manner as if each of them had been falsely made or forged.

**Affixing fictitious signature.**

SEC. 11. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft, or other evidence of debt, issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, or such corporation ever have existed.

**What allegations sufficient.**

SEC. 12. In any case where the intent to defraud is necessary to constitute the offence of forgery, or any other offence that may be prosecuted, it shall be sufficient to allege in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and, on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an attempt to defraud the United States, or any state, territory, county, city, town, or village, or any body corporate, or any public officer in his official capacity, or any co-partnership, or member thereof, or any particular person.

Counterfeiting coin, or having same in possession

SEC. 13. Every person who shall counterfeit any gold or silver coin, current by law or usage within this territory, and every person who shall have in his possession false money or coin, counterfeited in the similitude of any gold or silver coin, current as aforesaid, knowing the same to be false and counterfeited, and with the intent to utter or pass the same as true, and any person who shall utter, pass or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, with intent to injure or defraud, shall, on conviction, be punished by imprisonment in the penitentiary not more than ten years, nor less than one year, or by a fine not exceeding five thousand nor less than five hundred dollars.

Making or keeping dies, moulds, &c., for coining

SEC. 14. Every person who shall cast, stamp, engrave, make, or mend, or shall knowingly have in his possession, any mould, pattern, die, puncheon, engine, press, or other tool or instrument, adapted and designed for coining or making any counterfeit coin in the similitude of any gold or silver coin, current by law or usage in this territory, with intent to use the same, or cause or permit the same to be used or employed in coining or making any such false or counterfeit coin, as aforesaid, shall, on conviction, be punished by imprisonment in the penitentiary, not more than ten nor less than two years, or by fine, not less than one hundred nor more than five thousand dollars.

Punishment on conviction of second offence, &c.

SEC. 15. Any person who may be convicted of the same offence a second time, shall be punished by imprisonment, not exceeding twice the longest term mentioned in the section under which he may be indicted and tried.

# CHAPTER VI.

## OFFENCES AGAINST PUBLIC JUSTICE.

SEC. 1. Perjury, how punished.
2. What deemed perjury.
3. Subornation of perjury.
4 Inciting person to commit perjury.
5 Proceedings where witness is suspected of perjury by court.
6 Copies of papers, &c., may be taken for purposes of prosecution in such case.
7. Giving or offering bribes to officers
8. Accepting bribes.
9. Corrupting jurors, referees, &c.
10. Jurors, referees, &c., accepting bribes.
11. Aiding to escape from prison.
12 Aiding to escape from officer.
13 Officer suffering a voluntary escape
14 Officer suffering a negligent escape, or refusing to receive prisoner.
15. Officer refusing to serve process.
16. Refusal to aid officer.
17. Refusing to aid justice.
18 Falsely assuming to be a justice or other officer.
19 Disguising one's self to obstruct officer.
20 Concealing and compounding offences.
21 Officers taking reward for omitting duty.

SEC. 1. Every person being lawfully required to depose the truth

Perjury, how punished.

in any proceedings in a court of justice, who shall commit perjury, shall be liable, if such perjury were committed on the trial of an indictment for a capital crime, to imprisonment in the penitentiary not more than fifteen, nor less than three years, and if committed in any other case, to imprisonment in the penitentiary not more than ten, nor less than two years.

What deemed perjury.

SEC. 2. If any person, of whom an oath shall be required by law, shall wilfully swear falsely in regard to any matter or thing respecting which such oath is required, such person shall be deemed guilty of perjury.

Subornation of perjury.

SEC. 3. Every person who shall be guilty of subornation of perjury, by procuring another person to commit the crime of perjury as aforesaid, shall be punished in the same manner as for the crime of perjury.

Inciting to commit perjury.

SEC. 4. If any person shall endeavor to procure or incite any other person to commit the crime of perjury, though no perjury be committed upon conviction, he shall be punished by imprisonment in the penitentiary not more than three years, nor less than one year.

Proceedings when perjury suspected by court

SEC. 5. Whenever it shall appear to any court of record, that any witness or party, who has been legally sworn and examined, or has made an affidavit in any proceedings in a court of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the court may take a recognizance with sureties, for his appearing to answer to an indictment for perjury, and thereupon the witnesses to establish such perjury, may be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district attorney.

Copies of papers, &c., may be taken.

SEC. 6. If in any proceeding in a court of justice in which perjury shall be reasonably presumed as aforesaid, any papers, books or documents shall have been produced, which shall be deemed necessary to be used in any prosecution for such perjury, the court may order a certified copy of such books, papers or documents, to be taken, to be used in such prosecution, in the same manner as the original might have been.

Bribing officers.

SEC. 7. Every person who shall corruptly give, offer or promise, to any executive, judicial or legislative officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision, or judgment in any matter, question, cause or proceeding, which may then be pending, or may, by law, come or be brought before him in his official capacity, shall, upon conviction, be punished by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine not exceeding five thousand nor less than one hundred dollars.

Accepting bribes.

SEC. 8. Every executive, legislative or judicial officer, who shall corruptly accept any gift or gratuity, or any promise to make any gift, or do any act beneficial to such officer, under an agreement or with an understanding that his vote, opinion or judgment, shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is, or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall, upon conviction, be punished by imprisonment in the penitentiary not more than four, nor less than two years, or by fine not exceeding one thousand, nor less than one hundred dollars.

Corrupting jurors, &c.

SEC. 9. Every person who shall corrupt, or attempt to corrupt any court, commissioner, juror, arbitrator, umpire or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias his opinion, or influence the decision of such court, commissioner, juror, arbitrator, umpire or referee, in relation to any cause or matter which may be pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire or referee shall have been appointed, shall be punished upon conviction, by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine not exceeding one thousand, nor less than one hundred dollars.

Jurors, &c., accepting bribes.

SEC. 10. If any person summoned as a juror, or chosen or appointed as an arbitrator, umpire or referee, or if any court or commissioner, shall corruptly take anything to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause or proceeding, for the trial or decision of which such juror shall have been summoned, or for the hearing or determining of which, such court, commissioner, arbitrator, umpire or referee shall have been chosen or appointed, he shall, upon conviction, be punished by imprisonment in the penitentiary not more than three years, nor less than one year, or by a fine of not more than one thousand, nor less than one hundred dollars.

Aiding escapes from prison.

SEC. 11. Every person who shall convey into any penitentiary, jail, house of correction, house of reformation, or other like place of confinement, any disguise, or any instrument, tool, weapon or other thing, adapted or useful in aiding any prisoner to make his escape, with intent to facilitate the escape of any prisoner there lawfully committed or detained, or shall, by any means whatever, aid or assist any such prisoner, in his endeavor to escape therefrom, whether such escape be attempted or effected or not; and every person who shall forcibly rescue any prisoner held in custody, upon any conviction or charge of an offence, shall be liable to punishment by imprisonment in the penitentiary, not more than four, nor less than two years; or if the person, whose escape or rescue was effected or intended, was charged with an offence not capital, nor punishable by imprisonment in the penitentiary, the punishment for the offence mentioned in this section, shall be by imprisonment in the county jail not more than one year, or by fine of not more than five hundred, nor less than one hundred dollars.

Aiding to escape from officer.

SEC. 12. Every person who shall aid or assist any prisoner in escaping, or in attempting to escape, from any officer or person who shall have the lawful custody of such prisoner, shall, on conviction, be punished by imprisonment in the penitentiary not more than four, nor less than two years, or by a fine not exceeding five thousand, nor less than one hundred dollars.

Voluntary escape.

SEC. 13. If any jailor or other officer shall voluntarily suffer any prisoner in his custody, charged with or convicted of any criminal offence, to escape, he shall suffer, unless the prisoner were charged with or convicted of a capital offence, the like punishment and penalties as the prisoner, so suffered to escape, was sentenced to, or would be liable to suffer, upon conviction for the crime or offence wherewith he stood charged; and if the prisoner were charged with or convicted of a capital offence, he shall be punished by imprisonment in the penitentiary not more than twenty, nor less than five years.

Suffering negligent escape and refusing to receive prisoner.

SEC. 14. If any jailor or other officer shall, through negligence, suffer any prisoner in his custody, upon conviction, or upon any criminal charge, to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall, on conviction, be punished by imprisonment in the county jail not more than two years, or by a fine of not more than five hundred, nor less than one hundred dollars.

Refusing to serve process.

SEC. 15. If any officer authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person charged with or convicted of an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished on conviction, by imprisonment in the county jail not more than one year, or by fine not exceeding three hundred, nor less than fifty dollars.

Refusing to aid officer.

SEC. 16. If any person, being required in the name of the United States, or of the territory of Oregon, by any marshal or deputy marshal, sheriff or deputy sheriff, coroner, or constable, shall neglect or refuse to assist them in the execution of their office, in any criminal case, or in the preservation of the peace, or the apprehending or securing of any person for a breach of the peace, or in any case of escape or rescue of persons arrested on civil process, he shall, upon conviction, be punished by fine not exceeding five hundred, nor less than twenty-five dollars.

Refusing to aid justice.

SEC. 17. If any justice of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse or neglect to obey such justice, shall, on conviction, be punished in the same manner as is provided in the next preceding section, for refusing assistance to a sheriff; and no person to whom such justice shall be known or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse, or pretence of ignorance of his office.

Falsely assuming to be justice or other officer.

SEC. 18. If any person shall falsely assume to be a justice of the peace, sheriff, deputy sheriff, coroner, or constable, and shall take on himself to act as such, and require any person to aid or assist him in any matter pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner or constable, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding two hundred, nor less than fifty dollars.

Disguising one's self to obstruct officer.

SEC. 19. Every person who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt any officer, or any other person in the legal performance of his duty, or the exercise of his rights under the laws of the United States, or of this territory, whether such intent shall be effected or not, shall be punished, on conviction, by imprisonment in the county jail ~~not~~ more than one year, or by fine not exceeding three hundred, nor less than fifty dollars.

Concealing and compounding offences, &c.

SEC. 20. If any person, having knowledge of the commission of any offence, shall take any money, gratuity, reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, or not to prosecute therefor, or not give evidence thereof, he shall, where such offence was punishable with death, upon conviction, be punished by imprisonment in the penitentiary, not more than two years, nor less than six months; and where the offence was punishable in any other manner, he shall be punished by imprisonment in the county jail not more than six, nor less than three months, or by fine not exceeding two hundred, nor less than fifty dollars.

Officers receiving reward to neglect duty.

SEC. 21. If any sheriff, constable, or other officer, authorized to serve legal process, shall receive from a defendant, or any other person, any money or other valuable thing, as a consideration, reward, or inducement for delaying or omitting to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars.

## CHAPTER VII.

### OFFENCES AGAINST PUBLIC PEACE

SEC. 1. Unlawful assemblage, how suppressed
2 Refusing to assist officer when required.
3 Neglect of officer, how punished
4 Duties of officers when rioters refuse to disperse
5. Armed force when called out to obey certain civil officers
6. When officer to be considered guiltless if death ensues.
7. Riotously destroying house, &c.

Unlawful assemblages how suppressed.

SECTION 1. If any persons, to the number of three or more, whether armed or not, shall be unlawfully, riotously or tumultuously assembled in any city, town, or county, it shall be the duty of the mayor and each of the aldermen and councilmen of such city, and of every justice of the peace, living in such city or town, and of the sheriff of the county, and his deputies, and also of every constable and coroner, living in such city or town, to go among the persons so assembled, or as near them as may be with safety, and in the name of the territory of Oregon, to command all the persons so assembled, immediately and peaceably to disperse; and if the persons so assembled, shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with according to law.

Refusing to assist when required.

SEC. 2. If any persons present, being commanded by any of the magistrates or officers mentioned in the preceding section, to aid and assist in seizing and securing such rioters, or persons unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command, he shall be deemed to be one of the rioters or persons unlawfully assembled, and shall be liable to be prosecuted therefor, and punished accordingly.

Neglect of officer, how punished.

SEC. 3. If any mayor, councilman, justice of the peace, sheriff, deputy sheriff, constable or coroner, having notice of such riotous or tumultuous and unlawful assembly, as is mentioned in this chapter, in the city, town or county in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall omit or neglect to exercise the authority with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and be punished by a fine not exceeding five hundred dollars.

Duty of officers when rioters refuse to disperse.

SEC. 4. If any persons who shall be so riotously and unlawfully assembled, and who shall have been commanded to disperse as before provided, shall refuse or neglect to disperse without unnecessary delay, any two of the officers or magistrates before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be deemed expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Armed force when called out to obey certain civil officers.

SEC. 5. Whenever an armed force shall be called out, for the purpose of suppressing any tumult or riot, or dispersing any body of men, acting together by force, with intent to commit any felony, or to offer violence to persons or property, or with intent by force or violence, to resist or oppose the execution of the laws of this territory, such armed force, when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons who are committing any of the said offences, as they may have received from the governor, or from any judge of a court of record, or the sheriff of the county; and also such further orders as they there shall receive from any two of the magistrates or officers mentioned in the first section.

Officers when guiltless, if death ensue.

SEC. 6. If, by reason of any of the efforts made by any of the said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person or other persons, then present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons acting by their order, or under their direction, shall be held guiltless and fully justified in law; and ~~if~~ any of the said magistrates or officers, or any person acting by their order or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously and tumultuously assembled, shall be held answerable therefor.

Riotously destroying house, &c.

SEC. 7. If any of the persons so unlawfully assembled, shall demolish, pull down or destroy, or begin to demolish, pull down or destroy any dwelling-house, or any other building, or any ship, steamboat or vessel, or do any other unlawful act, he shall, on conviction, be punished by imprisonment in the penitentiary not more than three years, or in the county jail, not exceeding one year, or by fine, not exceeding one thousand dollars.

# CHAPTER VIII.

## OFFENCES AGAINST PUBLIC POLICY.

SEC. 1. Setting up or promoting illegal lotteries.
2. Selling lottery tickets or aiding therein
3. Second conviction.
4 Advertising lottery tickets, &c.
5. Making and selling tickets in fictitious lotteries.
6 Defendant to prove genuineness of ticket.
7. Prizes forfeited to the territory.

Setting up or promoting illegal lotteries.

SECTION 1. Every person who shall promote or set up any lottery for money, or shall dispose of any property of value, real or personal, by way of lottery; and every person who shall aid, either by printing or writing, or shall in any way be concerned in setting up, managing, or drawing any such lottery; or who shall, in any house, shop or building, owned or occupied by him, or under his control, knowingly permit the setting up, managing or drawing of any such lottery, or the sale of any lottery tickets, or share of a ticket, or any other writing, certificate, bill, token, or any other device, purporting or intended to entitle the holder, bearer or any other person, to any prize or interest, or share of any prize to be drawn in a lottery, shall, for every such offence, upon conviction, be punished by imprisonment in the penitentiary not more than one year, nor less than six months, or by a fine not exceeding one thousand, nor less than fifty dollars.

Selling lottery tickets or aiding

SEC. 2. Every person who shall sell, either for himself or for any other person, or shall offer for sale, or shall have in his pos-

CHAP. 8.

therein. 3 Denio, 101; 4 Barb. 318; 1 Comst. 180.

session, with intent to sell, or offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating or disposing of a ticket, in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token, or other device as is mentioned in the preceding section, shall, on conviction, be punished by fine not exceeding one thousand, nor less than fifty dollars.

Second conviction.

SEC. 3. If any person shall, after being convicted of any offence mentioned in the preceding sections, commit the like offence a a second time, he shall be punished by imprisonment in the penitentiary not more than two years, nor less than one year.

Advertising lottery tickets, &c. 3 Denio, 212.

SEC. 4. Every person who shall advertise any lottery ticket, or any share in such ticket, for sale, either by himself or any other person, or who shall set up or exhibit any sign, symbol, or any emblematic, or other representation of a lottery, or of the drawing thereof, or any such writing, certificate, bill, token, or other device before mentioned, or where the same may be purchased or obtained, or shall in any way invite or entice any other person to purchase or receive the same, shall, on conviction, be punished by fine not exceeding two hundred, nor less than twenty-five dollars.

Making or selling tickets, in fictitious lotteries.

SEC. 5. Every person who shall make or sell, or shall have in his possession with intent to sell, exchange or negotiate, or who shall, by printing, writing, or otherwise, assist in making or selling, or in attempting to sell, exchange or negotiate any false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill, token, or other device before mentioned, or any ticket, or share thereof, in any fictitious or pretended lottery, knowing the same to be false or fictitious, or who shall receive any money, or other thing of value, for any such ticket or share of a ticket, or for any such writing, certificate, bill, token, or other device, purporting that the owner, bearer, or holder thereof, shall be entitled to receive any price, or anything of value, that may be drawn in any lottery, knowing the same to be false or fictitious, shall, for every such offence, on conviction, be punished by imprisonment in the penitentiary, not exceeding two years nor less than six months.

Defendant to prove ticket genuine.

SEC. 6. Upon a trial of an indictment for either of the offences mentioned in the preceding section, any ticket or share of a ticket, or any other writing or thing before mentioned, which the defendant shall have sold, or offered for sale, or for which he shall have received any valuable consideration, shall be deemed to be false, spurious or fictitious, unless such defendant shall prove the same to be true and genuine, and to have been duly issued by the authority of some Legislature, within the United States, and that such lottery was existing and undrawn, and such ticket, or share thereof, or other writing or thing before mentioned, was issued by lawful authority and binding upon the person who issued the same.

Prizes forfeited to territory.

SEC. 7. All sums of money, and every other valuable thing drawn as a prize or share of a prize in any lottery, by any person being an inhabitant, or resident within this territory, and all sums of money, and other things of value received by such person, by reason of his being the owner or holder of any ticket, or share of a ticket, in any lottery or pretended lottery, contrary to the provisions of this chapter, shall be forfeited to the use of the territory, and may be recovered by an information to be filed, or by a civil action, to be brought by the district attorney, in the name and on the behalf of said territory.

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## CHAPTER IX.

### OFFENCES AGAINST PUBLIC CONVENIENCE.

SEC. 1. Obstructing highways.
2. Discharging ballast in navigable waters.

Obstructing highways.

SECTION 1. Every person, who shall in any manner obstruct any public highway, turnpike, plank road or bridge, or injure any materials used in the construction of such road or bridge, or injure any materials used in the construction of such road or bridge, shall, on conviction, be punished by a fine not exceeding five hundred, nor less than twenty-five dollars.

Discharging ballast in navigable water

SEC. 2. Every master, mate, or other officer of a vessel, and every other person who shall discharge the ballast of such vessel into the navigable portions, or channels of any of the bays, harbors or rivers of this territory, so as to obstruct navigation, shall, on conviction, be punished by a fine not exceeding one thousand, nor less than one hundred dollars.

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## CHAPTER X.

### GAMING.

SEC. 1. All gaming tables prohibited.
2. Dealing at faro, or forty-eight, or keeping gambling devices.
3. Person betting, how liable.
4. Person permitting gaming devices to be set up, how liable.
5. Who not excused from testifying, &c.
6. Jurisdiction of justice of peace under this chapter.
7. Duty of district attorney.
8. Money lost in gaming, to be recovered in name of county.
9. Gaming securities void.

Gaming tables, etc., prohibited.

SECTION 1. All E. O. or rolette tables, faro or faro banks, and all gaming with cards, gaming tables or gambling devices whatever, are hereby prohibited from being set up or used for gaming or gambling purposes in this territory.

Faro, or forty-eight.

SEC. 2. Every person who shall deal cards at the game called faro, or forty-eight, whether the same shall be dealt with fifty-two, or any other number of cards, and every person who shall keep, to be used in gaming, any gambling device whatever, designed to be used in gaming, shall forfeit the same on conviction, and be punished by fine not more than one hundred, nor less than fifty dollars.

Betting.

SEC. 3. Every person who shall bet any money or other property, at or on any gaming table, bank, or gambling device, prohibited by this chapter, shall, on conviction, be punished by fine not exceeding twenty nor less than five dollars.

Permitting gaming device to be set up.

SEC. 4. Every person who shall suffer any gaming table, bank, or gambling device, prohibited by this chapter, to be set up, or used for the purpose of gaming, in any house, building, steamboat, raft, keel boat, or boom, lot, yard, or garden, to him belonging, or by him occupied, or of which he has the control, shall be liable to punishment by fine, not exceeding one hundred, nor less than fifty dollars.

Testimony.

SEC. 5. No person shall be incapacitated or excused from testifying, touching any offence committed by another against any of the provisions of this chapter, relating to gaming, by reason of his having bet or played at the prohibited games or gaming devices; but the testimony which may be given by such person shall in no case be used against such witness.

Jurisdiction of justices.

SEC. 6. All fines and forfeitures mentioned in this chapter may be recovered before a justice of the peace, in the name and for the use of the county where such offence may have been committed.

Duty of district attorney.

SEC. 7. It shall be the duty of the district attorney, upon notice of the commencement of a suit under any of the provisions of this chapter, to immediately prosecute the same, in the name and for the use of the county in which the offence is committed.

Ib. To sue for money lost in gaming.

SEC. 8. If any person shall, by playing at cards, dice, or other game, or by betting on the hands or sides of such as are gaming, lose to any person so playing or betting, any sum of money or any goods whatever, and shall pay or deliver the same, or any part thereof, to the winner, it shall be the duty of the prosecuting attorney to sue for and recover the same, in the name of the county in which such game was played, or money lost, to go for the use of common schools.

Gaming securities void.

SEC. 9. All notes, bills, bonds, mortgages or other securities or conveyances whatever, in which the whole or any part of the consideration shall be for any money or goods won by playing or gaming at cards, dice or any other game whatever, or by betting on the sides or hands of any persons gaming, or for reimbursing or repaying any money knowingly lent or advanced at the time and place of such gaming or betting, or lent and advanced for any gaming or betting to any person so gaming or betting, shall be void and of no effect, as between the parties to the same, and as to all persons, except such as shall hold or claim under them in good faith, and without notice of the illegality of the consideration of such contract or conveyance.

# CHAPTER XI.

## OFFENCES AGAINST CHASTITY, MORALITY AND DECENCY.

Sec 1. Adultery.
2. Polygamy.
3. Excepted cases.
4. Fornication and lasciviousness.
5 Seduction under promise of marriage.
6 & 7. Concealing death of bastard.
8 Keeping house of ill fame
9. Lease of such house when void
10 For publishing obscene books.
11. Incest.
12. Sodomy.
13 Illegal disinterment.
14 Injuring grave stones
15. Making roads through grave yards.
16. Cruelty to animals.
17. For disturbing religious meetings
18 Civil process not to be served on Sunday.
19 Jurisdiction of justice of peace under this chapter.

Adultery.

SECTION 1. Every person who shall commit the crime of adultery, shall be punished, on conviction, by imprisonment in the penitentiary not more than two years, nor less than six months, or by fine not exceeding one thousand, nor less than one hundred dollars; and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery, and be liable to the same punishment; but no prosecution for adultery shall be commenced, except on the complaint of the husband or the wife, and no such prosecution shall be commenced after one year from the time of committing the offence.

Polygamy.

SEC. 2. If any person, who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife, he or she shall, except in cases mentioned in the third section, be deemed guilty of the crime of polygamy, and shall be punished, on conviction, by imprisonment in the penitentiary not more than four years, nor less than one year, or by fine not exceeding one thousand, nor less than five hundred dollars.

Excepted cases.

SEC. 3. The provisions of the preceding section shall not extend to any person, whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other, and remained absent for the space of seven years continuously, the party marrying again, not knowing the other to be living within that time; nor to any person who has been legally divorced from the bonds of matrimony.

Fornication

Lasciviousness.

SEC. 4. If any man and woman, not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness, and lascivious behavior, every such person shall, on conviction, be punished by fine not exceeding three hundred, nor less than fifty dollars, or by imprisonment in the county jail, not exceeding three months.

SEC. 5. Any unmarried man who, under promise of marriage, or

Seduction under promise of marriage.

any married man who shall seduce and have illicit connection with any unmarried female of previous chaste character, upon conviction, shall be punished by imprisonment in the penitentiary not more than five years, nor less than one year, or by imprisonment in the county jail not more than one year, nor less than six months, or by fine not exceeding one thousand, nor less than five hundred dollars; but no conviction shall be had under the provisions of this section, on the testimony of the female seduced, unsupported by other evidence, nor unless the indictment shall be found within two years after the commission of the offence: *Provided*, That the subsequent intermarriage of the parties may be pleaded in bar of a conviction.

Concealing death of bastard.

SEC. 6. If any woman shall conceal the death of any issue of her body, which if born alive would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall, on conviction, be punished by imprisonment in the penitentiary not more than one year, nor less than six months, or by fine not exceeding three hundred, nor less than one hundred dollars.

Ib. Indictable with murder.

SEC. 7. Any woman who shall be indicted for the murder of her infant bastard child, may also be charged in the same indictment with the offence described in the last preceding section; and if, on the trial, the jury shall acquit her of the charge of murder, and find her guilty of the other offence, judgment and sentence may be awarded against her for the same.

Keeping house of ill fame.

SEC. 8. Every person who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, on conviction, shall be punished by imprisonment in the county jail not more than one year, nor less than six months, or by fine not exceeding five hundred, nor less than one hundred dollars.

Ib. Lease of, when void.

SEC. 9. Whenever the lessee of any dwelling-house shall be convicted of the offence mentioned in the next preceding section, the lease or contract for letting such house, shall, at the option of the lessor, become void; and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

Publishing obscene books, &c.

SEC. 10. If any person shall import, print, publish, sell or distribute any book or any pamphlet, ballad, printed paper or other thing containing obscene language or obscene prints, pictures, figures or other descriptions, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school or place of education, or shall buy, procure, receive or have in his possession, any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of loan, sale, exhibition or circulation, or with intent to introduce the same into any family, school or place of education, he shall, on conviction, be punished by imprisonment in the county jail not more than six, nor less than three months, or by a fine not more than three hundred, nor less than fifty dollars.

Incest.

SEC. 11. All persons being within the degree of consanguinity, within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, shall be punished, on conviction, by imprisonment in the penitentiary not more than two years, nor less than six months.

Sodomy.

SEC. 12. Every person who shall commit sodomy, or the crime against nature, either with mankind or any beast, shall, on conviction, be punished by imprisonment in the penitentiary not more than five years nor less than one year.

Illegal disinterments.

SEC. 13. If any person, not being lawfully authorized, shall wilfully dig up, disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender and every accessory thereto, either before or after the fact, shall, on conviction, be punished by imprisonment in the penitentiary not more than two years, nor less than six months, or by fine not exceeding one thousand, nor less than fifty dollars.

Injuring grave stones, &c.

SEC. 14. If any person shall wilfully or with evil intent, destroy, mutilate, deface or remove any tomb, monument, grave stone or other structure, or thing placed, designed for a memorial of the dead, or any fence, railing, curb, or other thing intended for the protection or for the ornament of any tomb, monument, grave stone or other structure before mentioned, or of any enclosure for the burial of the dead, or shall wilfully and with evil intent, destroy, mutilate, remove, cut, break or injure any tree, shrub or plant, placed or being within any such enclosure, the person so offending, shall, on conviction, be punished by a fine not exceeding one thousand, nor less than twenty-five dollars.

Making roads, &c., through grave yards.

SEC. 15. If any person shall open or make any highway or town-way, or shall construct any railroad, turnpike, canal, or any other thing in the nature of a public easement, over, in, through, or upon such part of any enclosure, being the property of a town, village, or religious society, or of private proprietors, as may be used for the burial of the dead, unless an authority for that purpose shall have been specially granted by law, or unless the consent of such town, village, religious society, or private proprietors respectively, shall have first been obtained, he shall be liable to punishment by imprisonment in the county jail not more than one year, nor less than six months, or by fine not more than five hundred, nor less than one hundred dollars.

Cruelty to animals.

SEC. 16. Every person who shall cruelly beat or torture any horse, ox or other animal, whether belonging to himself or another, shall be liable to punishment by imprisonment in the county jail not more than thirty, nor less than ten days, or by fine not exceeding fifty, nor less than five dollars.

Disturbing religious meetings.

SEC. 17. Every person, who, on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people, met for the worship of God, within the place of such meeting, or out of it, shall be liable to fine not exceeding fifty, nor less than five dollars, or by imprisonment in the county jail not exceeding thirty days.

SEC. 18. No person shall serve or execute any civil process from

Civil process not to be executed on Sunday.

the midnight preceding to the midnight following the Lord's day, but such service shall be void, and the person serving or executing such process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

Jurisdiction of justice.

SEC. 19. Justices of the peace shall have jurisdiction of the offences mentioned in the seventeenth and eighteenth sections of this chapter.

## CHAPTER XII.

### OFFENCES AGAINST THE PUBLIC HEALTH.

SEC 1. Selling unwholesome food.
2. Adulterating food, liquors, &c.
3. Adulterating medicines and drugs.
4. Inoculating with small pox.
5. For selling poisons without labels.

Selling unwholesome provisions, &c.

SECTION 1. If any person shall, knowingly, sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished, on conviction, by imprisonment in the county jail, not more than one year, nor less than three months, or by fine, not exceeding five hundred, nor less than ten dollars.

Adulterating food or liquors.

SEC. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquors, or other liquor intended for drinking, with any substance injurious to health, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding one thousand, nor less than fifty dollars, and the articles so adulterated shall be forfeited and destroyed.

Adulterating medicine.

SEC. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, or knowingly offer any adulterated drug or medicine for sale, in such a manner as to render the same injurious to health, he shall, on conviction, be punished by imprisonment in the county jail not more than one year, nor less than three months, or by fine not exceeding five hundred, nor less than fifty dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

Inoculating with small pox.

SEC. 4. If any person shall inoculate himself, or any other person, or shall suffer himself to be inoculated with the small pox, within this territory, with intent to cause the prevalence or spread of this infectious disease, he shall, on conviction, be punished by imprisonment in the penitentiary, not more than three years, nor less than one year.

Selling poison without label.

SEC. 5. Every apothecary, druggist, or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other active poison, without having the word "poison," and the true name thereof, in English, written or printed upon a label attached to the vial, box or parcel containing the same, shall, on conviction, be punished by a fine not exceeding one hundred, nor less than ten dollars.

# CHAPTER XIII.

## GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

SEC. 1 Accessory to felony before the fact.
2 Procuring felony to be committed.
3 Trial of accessory.
4. Assisting principal or accessory to escape.
5. Accessory may be convicted before principal
6. Offences, near boundary lines, how alleged in indictment.
7 Offence where prosecuted, when wound is given in one county and death occurs in another.
8 Ib When wounds, &c., are given out of territory and death occurs in territory.
9. Allegation in indictment for embezzling
10. Certain fines appropriated for schools
11. Benefit of clergy, wager of battle, petty treason, abolished.

Aiding in felony.

SECTION 1. Every person who shall be aiding in the commission of any offence, which shall be a felony, or who shall be accessory thereto before the fact, by counselling, hiring or otherwise procuring such felony to be committed, shall, on conviction, be punished in the same manner as is or shall be prescribed for the punishment of the principal felon.

Procuring felony.

SEC. 2. Every person who shall counsel, hire, or otherwise procure any offence to be committed, which shall be a felony, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after the conviction of the same.

Trial of accessory.

SEC. 3. Any person guilty of the offence in the preceding sections may be indicted, tried and punished in the same court, and in the same county where the principal felon might be indicted and tried, although the offence of counselling, hiring, abetting, or procuring the commission of such felony, may have been committed either within or without the limits of this territory.

Assisting in escape of principal or accessory.

SEC. 4. Every person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who, after the commission of any felony, shall harbor, conceal, maintain, or assist any principal felon or accessory before the fact, or shall give such offender any other aid, knowing that he has committed a felony, or has been accessory thereto before the fact, with intent that he shall avoid and escape from detection, arrest, trial or punishment, shall be deemed an accessory after the fact, and on conviction, shall be imprisoned in the county jail not more than one year, or by fine not exceeding two hundred dollars.

Trial of accessory.

SEC. 5. Every accessory either before or after the fact to any felony, by any statute made, or which shall hereafter be made, may be indicted, convicted and punished, whether the principal felon shall or shall not have been convicted previously, and either in the county where such person shall have become an accessory, or in the county where such principal felony shall have been committed.

Offences near boundary lines.

SEC. 6. Offences committed on the boundary lines of two counties, or within one hundred rods of the dividing line between them, may have been alleged in the indictment, to have been committed in either of them, and may be prosecuted and punished in either county.

Wound in one county and death in another.

SEC. 7. If any mortal wound shall be given, or other violence or injury shall be inflicted, or any poison shall be administered in one county, by means whereof death shall ensue in another county, the offence may be prosecuted in either county.

Wound out of territory and death in territory

SEC. 8. If any such mortal wound shall be inflicted, or other violence or injury done, or poison administered, either within or without the limits of this territory, by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.

Allegation for embezzling.

SEC. 9. In the prosecution of any offence committed upon, or in relation to, or in any way affecting any real estate, or any offence committed in stealing, embezzling, destroying, injuring or fraudulently receiving or concealing any money, goods or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proven on trial that, at the time when such offence was committed, either the actual or constructive possession, or the general or special property in the whole, or any part of such real or personal estate, was in the person or community alleged in the indictment, or other accusation, to be the owner thereof.

Certain fines appropriated to schools.

SEC. 10. When any fine shall have been imposed upon any person, upon conviction upon an indictment or presentment of a grand jury, or where such fine shall have been imposed by a justice of the peace, such fine, when the same shall be collected, shall, in all cases be paid into the county treasury of the county where the conviction was had, and shall be appropriated for schools in the same manner as the yearly school fund collected in such county.

Benefit of clergy, battle, petit treason, etc., abolished.

SEC. 11. The plea of benefit of clergy, wager of battle, and the distinction between murder and petit treason, are abolished, and the last named offence shall be prosecuted and punished as murder in the second degree.

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# CHAPTER XIV.

## SEARCH WARRANT, AND PROCEEDINGS THEREON.

SEC. 1. Search warrants, when and by whom issued.
2. Magistrate, when to issue warrant.
3. Warrants, to whom issued, and what to contain.
4. Property seized, how kept and disposed of.

Search warrants.

SECTION 1. When complaint shall have been made on oath to any magistrate authorized to issue warrants in criminal cases, that personal property has been stolen, or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue his warrants to search for such property.

Magistrate, when to issue warrant.

SEC. 2. Any such magistrate, when satisfied that there is reasonable cause, may also, upon like complaint, made on oath, issue search warrants in the following cases, to wit:

1. To search for and seize any counterfeit or spurious coin, forged bank notes, and other forged instruments or tools, machines, or materials prepared or provided for making either of them;

2. To search for and seize any books, pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated, distributed, or introduced into any family, school, or place of education.

3. To search for and seize any gaming apparatus, or implements used or kept, and to be used in unlawful gaming in any gaming-house, or in any building, apartment, or place resorted to for the purpose of unlawful gaming.

To whom directed and what to contain.

SEC. 3. All such warrants shall be directed to the sheriff of the county, or his deputy, or to any constable of the county, commanding such officer to search the house or place where the stolen property, or other things for which he is required to search, are believed to be concealed, which place and property, or things to be searched for, shall be designated and described in the warrant, and to bring such stolen property or other things, when found, and the person in whose possession the same shall be found, before the magistrate who issued the warrant, or before some other magistrate or court having cognizance of the case.

Property seized, how kept.

SEC. 4. When any officer, in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any other things for which a search is allowed by this chapter, all the property and things so seized shall be safely kept, by the direction of the court or magistrate, so long as shall be necessary for the purpose of being produced in evidence on any trial, and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all other things seized, by virtue of such warrant, shall be destroyed, under direction of the court or magistrate.

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# CHAPTER XV.

## DEMANDING FUGITIVES FROM JUSTICE.

SEC. 1. Governor may appoint agents to demand fugitives from justice.
2. Proceedings when such demand is made by executive of another state, &c.
3. When and how magistrate to issue warrant; contents of warrant
4. Person charged to give recognizance, when to be committed; forfeiture of recognizance
5. When discharged, may be delivered up on warrant of executive.
6. Complainant liable for costs, &c

Governor may appoint agents to demand fugitives.

SECTION 1. The governor of this territory may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any state or territory, any fugitive from justice, or any person charged with felony, or any other crime in this territory, and whenever an application shall be made to the governor for that purpose, the district attorney, or any other prosecuting officer of the territory, when required by the governor, shall forthwith investigate the grounds of such application, and report to the governor all material circumstances which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of the demand; but the governor may in any case appoint such agents without requiring the opinion of, or any report from the district attorney; and the accounts of the agents appointed for such purpose, shall, in all cases, be audited by the governor, and paid from the territorial treasury.

Demand by governors of other states.

SEC. 2. When a demand shall be made upon the governor of this territory by the executive of any state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged in such state or territory with treason, felony or any other crime, the district attorney, or any other prosecuting officer, when required by the governor, shall forthwith investigate the ground of such demand, and report to the governor all material facts which may come to his knowledge as to the situation and circumstances of the person so demanded, especially as to whether he is held in custody, or is under recognizance to answer for any offence against the laws of this territory, or of the United States, or by force of any civil process, and also whether such demand is made according to law, so that such person ought to be delivered up; and if the governor be satisfied that such demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the territory, authorizing the agents who make such demand, either forthwith, or at such time as shall be designated by the warrant, to take and transport such person to the line of the territory, at the expense of such agents, and shall also, by such warrant, require the civil officers within this territory, to afford all needful assistance in the execution thereof.

Warrant of magistrate.

SEC. 3. Whenever any person shall be found within this territory, charged with any offence committed in any state or territory, and liable by the constitution and laws of the United States, to be delivered over on the demand of the executive of such state or territory, any court or magistrate authorized to issue warrants in criminal cases, may, upon complaint under oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate within the territory, to answer such complaint, as in other cases.

Recognizance, when required.

SEC. 4. If, upon examination of the person charged, it shall appear to the court or magistrate that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the governor, he shall, if not charged with a capital crime, be required to recognize, with sufficient securities, in a reasonable sum, to appear before such court or magistrate, at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate, and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day, in like manner as if the offence charged had been committed within this territory; and if the person so recognizing shall fail to appear according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had as in the case of other recognizances entered into before such court or magistrate; but if such person be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

Discharge of person recognized, etc.

SEC. 5. If the person so recognized or committed shall appear before the court or magistrate upon the day ordered, he shall be discharged, unless he be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or require of him to recognize anew for his appearance at some other day; and if, when ordered, he shall not so recognize, he shall be committed and detained as before provided; whether the person so appearing shall be recognized, committed or discharged, any person authorized by the warrant of the executive, may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Complainant liable for costs, etc.

SEC. 6. The complainant in such cases, shall be answerable for the actual costs and charges, and for the support in prison of any person so committed, and shall advance to the jailor one week's board at the time of commitment, and so from week to week so long as such person shall remain in jail; and if he fail to do so, the jailor may forthwith discharge such person from his custody.

## CHAPTER XVI.

### PROCEEDINGS TO PREVENT COMMISSION OF CRIMES.

SEC. 1. Certain officers conservators of the public peace.
2. Proceedings when complaint is made to magistrate.
3. Magistrate when to issue warrant.
4. Proceedings on examination before magistrate.
5. Privilege of defendant.
6. Recognizance, when required.
7. Defendant, when to be committed.
8. Discharge of defendant, complainant, when to pay costs.
9. In other cases, costs, how and when paid.
10. Appeal, when allowed.
11. When magistrate may require witnesses to recognize.
12. Proceedings on appeal by District Court.
13. Consequence of appellant failing to prosecute appeal.
14. After commitment, defendant may be discharged on giving security.
15. Recognizance to be transmitted to District Court.
16. When person may be ordered to recognize without warrant.
17. Armed persons, when required to find sureties.
18. Suit on recognizance.
19. Surety may surrender principal.

Keeping the peace.

SECTION 1. The judges of the several courts of record, in vacation as well as in open court, and all justices of the peace, shall have power to cause all laws made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

When sureties may be required. 17 Wen. 191; 23 do. 639.

SEC. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witness who may be produced on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Warrant to issue.

SEC. 3. If, upon examination, it shall appear that there is just cause to fear that such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

Examination

SEC. 4. The magistrate before whom any person is brought upon charge of having made threats as aforesaid, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in the presence of the party charged, in relation to any matters connected with such charge, which may be deemed pertinent.

Privilege of defendant.

SEC. 5. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel in such examination, and also in the cross-examination of the witnesses in support of the prosecution.

Recognizance, when required.

SEC. 6. If, upon examination, it shall appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be required to enter into recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this territory, and especially towards the person requiring such security, for such term as the magistrate shall order, not exceeding six months; but he shall not be ordered to recognize for his appearance at the District Court, unless he is charged with some offence for which he ought to be held to answer at said court.

When to be committed 23 Wen. 639

SEC. 17. If the person so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail during the period for which he was required to give security, or until he shall so recognize, stating in the warrant the cause of commitment, with the sum and time for which security was required.

Complainant when to pay costs.

SEC. 8. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he shall order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Costs.

SEC. 9. When no order respecting the costs is made by the magistrate, they shall be allowed and paid in the same manner as costs before justices in criminal prosecutions; but in all cases where a person is required to give security for the peace, or for his good behavior, the magistrate may further order the costs of prosecution, or any part thereof, to be paid by such person, who shall stand committed until such costs are paid, or he is otherwise legally discharged.

Appeal.

SEC. 10. Any person aggrieved by the order of any justice of the peace, requiring him to recognize as aforesaid, may, within ten days after the decision of the justice, on giving the security required, appeal to the District Court, next to be holden in the same county, or that county to which said county is attached for judicial purposes.

Witnesses when to recognize

SEC. 11. The magistrate, from whose order an appeal is to be taken, shall require such witnesses as he may deem necessary to support the complaint, to recognize for their appearance at the court to which appeal is made.

Power of appellate court.

SEC. 12. The court before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum and for such time as the court shall think proper, and may also make such order in relation to the costs of prosecution, as it may deem just and reasonable.

Failing to prosecute appeal

SEC. 13. If any party appealing, shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as security for any cost which shall be ordered by the court appealed to, to be paid by the appellant.

Discharge of party committed.

SEC. 14. Any person committed for not finding sureties, or refusing to recognize as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Recognizances when to be transmitted.

SEC. 15 Every recognizance taken in pursuance of the foregoing provisions, shall be transmitted by the magistrate to the District Court for the county, on or before the first day of the next term, and shall be there filed of record by the clerk.

Order to recognize without warrant.

SEC. 16. Any person, who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill, or beat another, or to commit any violence or outrage against his person or property, and every person, who, in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, and being of good behavior for a term not exceeding six months, and in case of a refusal, may be committed as before directed.

Armed persons, when required to find sureties.

SEC. 17. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault, injury, or other violence to his person, or to his family or property, he may, on complaint of any other person, having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace for a term not exceeding six months, with the right of appealing as before provided.

Suit on recognizance.

SEC. 18. Whenever on a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may surrender principal.

SEC. 19. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right to take and surrender his principal, as if he had been bail for him in a civil case, and upon such surrender, shall be discharged and exempted from all liability for any act of the principal, subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person so surrendered may recognize anew, with sufficient sureties, before any justice of the peace for the residue of the term, and thereupon shall be discharged.

# CHAPTER XVII.

## ARRESTS.

SEC. 1. Arrest defined.
2. Arrest, how and by whom made.
3. Every person must aid officer in making arrest, if required.
4. Arrest for felony and misdemeanor, when may be made.
5. As to what constitutes arrest.
6 Officer may pursue fugitive into other counties.
7. When an officer or private person may arrest without warrant.
8. Arrest, how made in such case.
9. Escape and capture of prisoner.

Arrest.

SECTION 1. Arrest is the taking a person into custody, that he may be held to answer for a public offence.

How made.

SEC. 2. An arrest may be either by a peace officer under a warrant, or without a warrant, or by a private person.

Assisting officer.

SEC. 3. Every person shall aid an officer in the execution of a warrant, if the officer require his aid, and be present and acting in its execution.

Arrest when to be made.

SEC. 4. If the offence charged be a felony, the arrest may be made on any day, and at any time of the day or night; if it be a misdemeanor, the arrest shall not be made on Sunday, or at night, unless upon the direction of the magistrate indorsed upon the warrant.

What constitutes arrest.

SEC. 5. An arrest is made by an actual restraint of the person of the defendant, or by his submission to the custody of the officer.

Pursuit.

SEC. 6. If any person, against whom a warrant may be issued for an alleged offence committed in any county, shall, either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff, or other officer to whom such warrant may be directed, may pursue and apprehend the party charged, in any county in this territory, and for that purpose may command aid, and exercise the same authority as in his own county.

Arrest without warrant.

SEC. 7. A peace officer or a private person may, without a warrant, arrest a person:

1. For a public offence committed or attempted in his presence;
2. When the person arrested has committed a felony, though not in his presence;
3. When a felony has in fact been committed, and he has reasonable cause for believing that the person arrested committed it.

How to be made

SEC. 8. He shall, before making the arrest, inform the person to be arrested of the cause thereof, and require him to submit, except when he is in the actual commission of the offence, or when he is arrested on pursuit immediately after its commission.

Escape and capture.

SEC. 9. If a person arrested escape, or be rescued, the person from whose custody he escaped, or was rescued, may immediately pursue and retake him, at any time, and in any place in the territory.

# CHAPTER XVIII.

## EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL

SEC. 1. What officers authorized to issue process under this chapter.
2. Proceedings of justice on complaint being made, issue of warrant.
3. Bail, when and when not to be taken
4. When witnesses may be held to bail.
5. Ib When additional securities may be required.
6. In case a married woman or minor is witness.
7. Witness refusing to recognize may be committed.
8. When prisoner may be released.
9. Justice may associate with himself another justice.
10. Testimony to be reduced to writing.
11. Return of examination, recognizance, &c., to district attorney or clerk.
12. Discharge of defendant on giving satisfaction.
13. Order discharging recognizance, when filed.
14. Forfeiture of recognizance, proceedings, &c.
15 & 16 Action on recognizance
17. Examination, how conducted.
18. When persons not to be admitted to bail.

Who to issue process.

SECTION 1. For the apprehension of persons charged with offences, the judges of the district courts, in vacation as well as in term time, and all justices of the peace, are authorized to issue process to carry into effect the provisions of this chapter.

Duty of magistrate on complaint. 3 Hill, 300

Issue of warrant. 5 Barb. 465

SEC. 2. Upon complaint being made to any such magistrate, that a criminal offence has been committed, he shall examine on oath the complainant, and any witness provided by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been committed, the court or justice shall issue a warrant reciting the substance of the accusation, and requiring the officer to whom it shall be directed, forthwith to take the person accused and bring him before the said court or justice, or before some other court or magistrate of the county, to be dealt with according to law; and in the same warrant, may require the officer to summon such witnesses as shall be therein named, to appear and give evidence on the examination.

Bail when taken. 4 Wen. 393; 10 do. 431, 465.

SEC. 3. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty, and if the offence be bailable by the magistrate and the prisoner offer sufficient bail, or the amount of money in lieu thereof, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be committed for trial.

Ib. When not taken.

Witnesses when to recognize.

SEC. 4. When a magistrate admits a prisoner to bail, or commits him, he shall also bind by recognizance such witnesses against the prisoner as he shall deem material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

Additional security when required.

SEC. 5. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be deemed necessary, for his appearance at court.

Married woman, or minor.

SEC. 6. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor, in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

How compelled.

SEC. 7. All witnesses required to recognize either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

Admitting to bail.

SEC. 8. Any judge of a court of record, on application of any prisoner committed for a bailable offence, may inquire into the case and admit such prisoner to bail; and any person committed for not finding sufficient securities, may be admitted to bail by either of said judges.

Associating of magistrates.

SEC. 9. Any magistrate to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more magistrates of the same county; and they may together execute the powers and duties before mentioned, but no fees shall be taxed for such associates.

Testimony, how written.

SEC. 10. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate.

Return of examination.

SEC. 11. All examinations and recognizances taken by any magistrate, in pursuance of the provisions of this chapter, shall be certified and returned by him to the district attorney, or the clerk of the court, before which the party charged is bound to appear on or before the first day of the sitting thereof; and if such magistrate shall neglect or refuse to return the same, he may be compelled forthwith, by rule of court, and in case of disobedience, may be proceeded against by attachment, as for contempt.

Discharge of defendant on giving satisfaction.

SEC. 12. When any person shall be committed to prison, or shall be under recognizance to answer any charge for a misdemeanor, for which the party injured may have a remedy by a civil action, except when the offence was committed upon a sheriff or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear before the magistrate who made the commitment, or took the recognizance, and acknowledged in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all costs which may have accrued, discharge the recognizance, or supersede the commitment by an order under his hand; and may also discharge all recognizances, and supersede the commitment of all witnesses in the case.

Order discharging recognizance, when filed.

SEC. 13. Every such order of the magistrate, discharging the recognizance of the party, or witness, shall be filed in the office of the clerk, before the sitting of the court before which they are bound to appear; and every order superseding the commitment of the party charged, or of any witnesses, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action for such injury.

Forfeiture of recognizance Proceedings, &c.

SEC. 14. When any person under recognizance in any criminal prosecution, either to appear and answer, or to prosecute an appeal or testify in any court, shall fail to perform the condition of any such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct.

Action on recognizance

SEC. 15. When any action is brought in the name of the territory, against a principal or surety in any recognizance entered into either by a party, or a witness in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may, on application of any party defendant, remit any part or the whole of such penalty, and may render judgment thereon for the territory, according to the circumstances of the case, and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

Ib., when not to be barred or defeated.

SEC. 16. No such action brought on a recognizance as mentioned in the preceding section, shall be barred or defeated, nor shall judgment be arrested thereon, by reason of any neglect or omission to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any such defect in the form of the recognizance, if it sufficiently appear from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate before whom it was taken, was authorized by law to require and take such recognizance.

Examination how conducted.

SEC. 17. The magistrate, while examining any witness, may, in his discretion, exclude from the place of examination all the other witnesses; he may also, if requested, or if he can see cause, direct the witnesses for or against the prisoner to be kept separate, so that they cannot converse with each other until they shall have been examined.

Bail, when not to be taken.

SEC. 18. Persons charged with an offence punishable with death, shall not be admitted to bail when the proof is evident or the presumption great; but for all other offences bail may be taken in such sum as in the opinion of the magistrate will secure the appearance of the person charged with the offence, at the court where such person is to be tried.

# CHAPTER XIX.

## OF CHALLENGING JURORS.

SEC. 1. Defendant may challenge: panel of grand jury.
2. Challenge to grand jury, for what cause interposed.
3. Challenge to individual juror, for what cause interposed.
4. Challenge must be entered on minutes of court.
5. If challenge allowed, grand jury not to find indictment.
6. If challenge to individual juror be allowed, he cannot act.
7. Jury must inform court of a violation of last section.
8. Court to appoint foreman of grand jury.
9. Oath to be administered to grand jury.
10. Oath to be administered to grand juror.
11. Court must charge grand jury.
12. Grand jury must retire.
13. Grand jury must appoint clerk; duty of clerk.
14. Power and duties of grand jury.
15. Indictment defined.
16. Foreman may administer oath to witness.
17. What evidence can be received.
18. The evidence must be legal.
19. Jury must weigh the evidence.
20. Grand jury when to make complaint.
21. Grand jury, inquiries of.
22. Grand jury have access to prison.
23. Grand jury may ask advice of court.
24. What grand jury may be required to disclose.
25. Grand juror not liable for his proceedings before grand jury.

Defendant may challenge.

SECTION 1. A person held to answer a charge for a public offence, may challenge the panel of the grand jury, or an individual grand juror, before they retire, after being sworn and charged by the court.

Ib To grand jury for what cause interposed.

SEC. 2. A challenge to the panel may be interposed for one or more of the following causes only.

1. That the requisite number of ballots was not drawn from the jury box of the county.

2. That the drawing was not had in the presence of the officer, or officers prescribed by law.

3. That the drawing was not had at least ten days before the court.

SEC. 3. A challenge, to an individual grand juror, may be interposed by a person actually in custody, or on bail, for one or more of the following reasons:

Ib. To individual juror, for what cause interposed.

1. On the ground of a want of any of the qualifications, prescribed by statute, to render a person competent as a juror;

2. That a state of mind exists on his part in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that he cannot act impartially, and without prejudice to the substantive rights of the party challenging.

SEC. 4. Challenges shall be entered upon the minutes, and decided by the court.

Challenges must be entered.

SEC. 5. If a challenge to the panel be allowed, the grand jury are prohibited from inquiring into the charges against the defendant by whom the challenge is made.

If challenge to jury allowed.

SEC. 6. If a challenge to an individual grand juror be allowed, he cannot be present at, or take any part in the consideration of the charge against the defendant, who interposed the challenge, or the deliberation of the grand jury thereon.

If challenge to juror allowed.

SEC. 7. The grand jury shall inform the court of a violation of the last section, and it shall be punished by the court as a contempt.

Jury to inform, etc.

SEC. 8. The court shall appoint a foreman to the grand jury.

Appointm'nt of foreman.

SEC. 9. The following oath shall be administered to the grand jury: "You, as grand jurors, for the body of the county of ———, (as the case may be,) do solemnly swear (or affirm) that you will diligently inquire into, and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the United States of America, of the district attorney, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred or malice; neither will you leave any person unpresented through fear, favor, affection, or hope of reward; but that you will present things truly, as they come to your knowledge, according to the best of your understanding, and according to the laws of this territory. So help you, God."

Oath to be administered to grand jury.

SEC. 10. If after the foreman is sworn, any grand juror appear, and be admitted as such, the oath, as prescribed in section nine, shall be administered to him, commencing, "You, as one of this grand jury," and so on to the end.

Ib To grand juror.

SEC. 11. The grand jury being impanneled and sworn, shall be charged by the court; in doing so, it shall give them such information as it may deem proper, as to the nature of their duties, and any charges for public offences returned to the court, or likely to come before the grand jury.

Court to charge jury

SEC. 12. The grand jury then shall retire to a private room and inquire into the offences cognizable by them.

Grand jury must then retire.

SEC. 13. The grand jury shall appoint one of their number as clerk, who shall preserve the minutes of their proceedings, except of the votes of the individual members on a presentment or indictment, and of the evidence given before them.

Ib. To appoint clerk; his duties.

Power and duty of grand jury.

SEC. 14. The grand jury have power, and it is their duty to inquire into all public offences committed, or triable in the county, and to present them to the court by indictment.

Indictment defined.

SEC. 15. An indictment is an accusation in writing, presented by a grand jury to a competent court, charging a person with a public offence.

Foreman may administer oath.

SEC. 16. The foreman may administer an oath to any witness appearing before the grand jury.

What evidence can be received.

SEC. 17. In the investigation of a charge for the purpose of indictment, the grand jury shall receive no other evidence than:

1. Such as is given by witnesses produced and sworn before them; or,

2. By legal documentary evidence.

Ib. Must be legal.

SEC. 18. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay and secondary evidence.

Must weigh the evidence

SEC. 19. The grand jury are not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge, they should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

Grand juror when to complain.

SEC. 20. If a member of the grand jury knows, or has reason to believe, that a public offence has been committed, which is triable in the county, he shall declare the same to his fellow jurors, who shall thereupon investigate the same.

Into what to inquire.

SEC. 21. The grand jury shall inquire:

1. Into the condition of every person imprisoned on a criminal charge, triable in the county, and not indicted;

2. Into the condition and management of the public prisons in the county; and

3. Into the wilful and corrupt misconduct in office, of public officers of every description in the county.

Have access to prisons.

SEC. 22. They shall be entitled to free access at all reasonable times to the public prisons, and to the examination, without charge, of all public records in the county.

May ask advice of court

SEC. 23. The grand jury may at all reasonable times ask the advice of the court, or of the district attorney; and whenever required by the grand jury, it shall be the duty of the district attorney to attend them for the purpose of framing indictments, or of examining witnesses in their presence, but no district attorney, sheriff, or other person, except the grand jurors, shall be permitted to be present during the expression of their opinions, or the giving their votes upon any matter before them.

What juror may be required to disclose.
Denio, 133.

SEC. 24. A member of the grand jury may be required by any court, to disclose the testimony of any witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court, or to disclose the testimony given before them by any other person, upon a charge against him for perjury in giving his testimony, or upon his trial therefor.

Grand juror not liable for his proceedings before the grand jury

SEC. 25. A grand juror shall not be questioned for anything he may say, or any vote he may give in the grand jury, relative to a matter legally pending before the jury, except for a perjury of which he may have been guilty in making an accusation, or giving testimony to his fellow jurors.

# CHAPTER XX.

## FINDING AND PRESENTATION OF INDICTMENT.

SEC. 1. Indictment, how found
2. Charge dismissed, may be again submitted.
3. Names of witnesses must be indorsed on indictment, and when name of prosecutor.
4. Indictment must be presented by foreman.

Indictment, how found.

SECTION 1. An indictment shall not be found without the concurrence of at least twelve grand jurors; when so found, it shall be indorsed "a true bill," and the indorsement shall be signed by the foreman of the grand jury; when not so found, it shall be indorsed, "not a true bill," and signed in like manner.

Charge dismissed may be again submitted.

SEC. 2. The dismissal of the charge shall not, however, prevent it being again submitted to a grand jury, as often as the court may direct.

Names of witnesses to be indorsed on indictment.

When name of prosecutor

SEC. 3. When an indictment shall be found, the names of the witnesses examined before the grand jury shall, in all cases, be inserted at the foot of the indictment, or indorsed thereon before it is presented to the court; and in cases of indictments, other than for felony, the grand jury shall indorse thereon the name of any person who shall voluntarily appear as prosecutor.

Indictment, how presented

SEC. 4. When an indictment is found by the grand jury, it shall be immediately presented by their foreman, in their presence, to the court, and shall be filed with the clerk, and remain in his office as a public record.

# CHAPTER XXI.

## INDICTMENT

SEC. 1. Indictment.
2. What to contain
3 Forms of indictment
4. Above forms sufficient.
5. Indictments must be direct
6. Proceedings when defendant is indicted by fictitious name.
7. Indictment must charge but one offence
8 Time of offence, how stated,
9. Certain allegation immaterial.
10 Words in an indictment, how construed.
11 Words of statute need not be strictly construed.
12. Indictment when sufficient.

CHAP. 21. SEC. 13. Defects in matter of form, how regarded.
14. Presumptions of law need not be stated.
15. Judgments, how pleaded.
16. Private statute, how pleaded,
17. Indictment for libel, need not state extrinsic facts.
18 Misdescription in forgery, when immaterial.
19. What sufficient in perjury.
20. Upon indictments against several, any or all may be convicted.
21. Distinction between principal and accessory before the fact, and principals in first and second degree, abolished.
22. Compounding offences, how indictable.

Indictment, what to contain. SECTION 1. The first pleading on the part of the territory, shall be the indictment.

SEC. 2. The indictment shall contain:

1. The title of an action specifying the name of the court to which the indictment is presented, and the names of the parties;

2. A statement of the acts constituting the offence, in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended.

Its form. SEC. 3. It may be substantially in the following form:

[No. 1.].

*The Territory of Oregon,* vs. *A—— B——.* } The District Court for the county of ——, and territory of Oregon.

A. B. is accused by the grand jury of the county of ——, by this indictment, of the crime of (here insert the name of the offence, if it have one, such as treason, murder, arson, or the like, or if it be a misdemeanor, having no general name, such as libel, larceny, or the like, insert a brief description of it, as it is given by law,) committed as follows:

The said A. B., on the —— day of ——, A. D. 18—, at the town, (city, or village, as the case may be,) of ——, in this county, (here set forth the act, charged as an offence, according to the form adapted to the case, as provided in the following forms, or similar ones.)

Dated at ——, in the county of ——, the —— day of ——, A. D. 18—.

(Signed,) S. H.,
*Foreman of the Grand Jury.*

[No. 2.]

*In an indictment for murder in the first degree.*

[Commencement the same as No. 1]

Indictment for murder. —— Purposely, feloniously, and of deliberate and premeditated malice, and without the authority of law, or in the perpetration or attempt to perpetrate a rape, arson, robbery, or burglary, (as the case may be,) killed C. D., by shooting him with a gun or pistol, or by administering to him poison, or by pushing him into the water whereby he was drowned, or by throwing him from the roof of a building, or by means unknown to the grand jury, or as the case may be.

### [No. 3.]

*In an indictment for murder in the second degree.*

——— Without the authority of law, purposely, feloniously, maliciously, but without deliberation and premeditation, or being engaged in the commission of some felony, (as the case may be,) other than a rape, arson, robbery and burglary, without any desire to effect death, killed C. D., by shooting him with a gun, as the case may be. Ib In second degree.

### [No. 4.]

*Manslaughter.*

——— Feloniously, unlawfully and voluntarily killed C. D., without malice, and without any mixture of deliberation, by stabbing him with a knife, or as the case may be. Indictment for manslaughter

### [No. 5.]

——— Deliberately and feloniously assisted one C. D. in the commission of self-murder, which crime the said C. D. then and there committed, by hanging himself by the neck until he was dead, as the case may be. Ib Aiding self-murder

### [No. 6.]

*In an indictment for rape.*

——— Forcibly and feloniously ravished C. D., a woman of the age of ten years or upwards; or Ib. Rape.

### [No. 7.]

——— Unlawfully, carnally and feloniously knew and abused C. D., a female child under the age of ten years. Ib

### [No. 8.]

*In an indictment for robbery.*

——— Feloniously took a gold watch, (or any other property,) the property of C. D., from his person and against his will, by violence to his person, (or by putting him in fear of some immediate injury to his person;) or Ib Robbery.

### [No. 9.]

——— Feloniously took a gold watch, (or as the case may be,) the property of C. D., in his presence and against his will, by violence to his person. Ib.

### [No. 10.]

*In an indictment for arson.*

——— Wilfully, maliciously and feloniously set fire to, (or burned,) in the night time, a dwelling-house in which there was a human being at the time lawfully residing, namely, N. H., (or whose name is unknown to the grand jury;) or Ib Arson.

### [No. 11.]

——— Wilfully, maliciously and feloniously set fire to, (or burned,) the dwelling-house of another in the day time; or Ib.

### [No. 12.]

*In an Indictment for larceny.*

Indictment for larceny. ——— Feloniously took and carried away one gold watch and one silver chain, the personal property of J. D., or of a person (whose name is unknown to the grand jury,) of the value of more than thirty-five dollars; or

### [No. 13.]

*In an indictment for burglary.*

Ib. Burglary ——— Feloniously broke into and entered, in the night time, the dwelling-house of C. D., in which there was at the time a human being, namely, the said C. D., (or whose name is unknown to the grand jury,) with intent to commit murder, (a rape, robbery, or larceny, or other public offence, describing it generally,) therein, by forcibly bursting or breaking the wall or outer door or window of such house, (or as the case may be;) or

### [No. 14.]

*In an indictment for forging and counterfeiting.*

Ib Forgery and counterfeiting. ——— Feloniously forged or counterfeited, or falsely altered, by erasing a material part thereof, (as the case may be,) an instrument purporting to be (or being) the last will and testament of C. D., devising certain real and personal property, with intent to defraud; or

### [No. 15.]

Ib. ——— Feloniously forged a certificate, purporting to have been issued by J. C., an officer duly authorized to make such certificate, of the acknowledgment of C. D., of the execution by him of a conveyance to E. F., of certain real property in the town of ———, with intent to defraud the said C. D.; or

### [No. 16.]

Ib. ——— Feloniously and falsely made an impression, purporting to be the impression of the great seal of the territory, on an instrument in writing, being, (or purporting to be,) a ———, (stating generally the purport of the instrument,) with the intent to defraud; or

### [No. 17.]

Ib. ——— Feloniously counterfeited a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current by custom or usage within this territory; or

### [No. 18.]

Ib. Having counterfeit coin. ——— Feloniously had in his possession a counterfeit of a gold (or silver) coin of the republic of Mexico, called a dollar, which was at that time current in the territory, knowing the same to be counterfeit, with intent to defraud (or injure) by uttering the same as true or false.

[No. 19.]

*In an indictment for perjury.*

———, On his examination as a witness duly sworn to testify the truth, on the trial of a civil action in the court of ———, between C. D., plaintiff, and E. F., defendant, which court had authority to administer such oath, he feloniously testified falsely, that (stating the facts to be alleged to be false,) the matter so testified being material, and the testimony being wilfully and corruptly false. Indictment for perjury

[No. 20.]

*In an indictment for bigamy.*

———, Having a wife then living, feloniously and unlawfully married one G. A. Ib Bigamy.

[No. 21.]

*In an indictment for libel.*

———, Published in a newspaper called the ———, the following libel concerning C. D., (*here insert the article charged as being a libel.*) Ib Libel.

SEC. 4. The manner of stating the fact constituting the offence, as set forth in the preceding forms, shall be sufficient in all cases where the forms given are applicable. In all other cases, forms may be used as nearly similar as the nature of the case may permit. Above forms sufficient.

SEC. 5. The indictment shall be direct and certain as it regards: Indictment must be direct.

1. The party charged;
2. The offence charged;
3. The particular circumstances of the offence charged, when they are necessary to constitute a complete offence.

SEC. 6. When a defendant is indicted by a fictitious or erroneous name, and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment. Proceedings when defendant is indicted by fictitious name.

SEC. 7. The indictment shall charge but one offence, and in one form only, except that where the offence may be committed by the use of different means, the indictment may allege the means in the alternative. Indictment must charge but one offence.

SEC. 8. The precise time at which the offence was committed need not be stated in the indictment, but may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offence. Time of offence, how stated.

SEC. 9. When the offence involves the commission of or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material. Certain allegation immaterial.

SEC. 10. The words used in an indictment shall be construed in their usual acceptations, in common language, except words and Words in an indictment, how construed.

phrases defined by law, which are to be construed according to their legal meaning.

Words of statute need not be strictly construed.

SEC. 11. Words used in the statutes to define a public offence, need not be strictly pursued in the indictment; but other words conveying the same meaning may be used.

Indictment, when sufficient.

SEC. 12. The indictment is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court is not accurately stated;

2. That it was found by a grand jury of the county in which the court was held;

3. That the defendant is named, or, if his name cannot be discovered, that he is described by a fictitious name, with the statement that he has refused to discover his real name;

4. That the offence was committed at some place within the jurisdiction of the court, except where, as provided by law, the act, though done without the local jurisdiction of the county, is triable therein;

5. That the offence was committed at some time prior to the time of finding the indictment;

6. That the act or omission charged as the offence, is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended;

7. That the act or omission charged as the offence, is stated with such a degree of certainty as to enable the court to pronounce judgment upon a conviction, according to the right of the case.

Defects in matters of form, how regarded.

SEC. 13. No indictment shall be deemed insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of a defect or imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Presumptions of law need not be stated.

SEC. 14. Neither presumptions of law nor matter of which judicial notice is taken, need be stated in an indictment.

Judgments, how pleaded

SEC. 15. In pleading a judgment or other determination of, or proceeding before a court, or officer of special jurisdiction, it shall not be necessary to state the facts conferring jurisdiction, but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, shall be established on trial.

Private statute, how pleaded.

SEC. 16. In pleading a private statute or a right derived therefrom, it shall be sufficient to refer to the statute by its title, and the day of its passage, and the court thereupon shall take special notice thereof.

Indictment for libel, how need not state extrinsic facts.

SEC. 17. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application, to the party libeled, of the defamatory matter on which the indictment is founded, but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published shall be established on the trial.

SEC. 18. When an instrument which is the subject of an indictment for forgery has been destroyed or withdrawn by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial. Misdescription in forgery, when immaterial.

SEC. 19. In an indictment for perjury, or subornation of perjury, it shall be sufficient to set forth the substance of the controversy or matter in respect to which the offence was committed, and in what court, or before whom the oath alleged to be false was taken, and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed. What sufficient in perjury.

SEC. 20. Upon an indictment against several defendants, any one or more may be convicted or acquitted. Part or all defendants may be convicted.

SEC. 21. The distinction between an accessory before the fact and a principal, and between the principals in the first and second degree, in cases of felony, is abrogated; and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offence, or aid and abet in the commission, though not present, shall hereafter be indicted, tried and punished as principals in the case of a misdemeanor. Distinction between principal and accessory before the fact abolished.

SEC. 22. A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offence, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offence has not been indicted or tried. Compounding offence, how indicted.

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# CHAPTER XXII.

## ARRAIGNMENT OF THE DEFENDANT.

SEC 1. Defendant, how arraigned.
2 Defendant must be present in cases of felony.
3. Court may direct officer to arraign defendant.
4. When defendants do not appear after giving bail, bench warrant may issue.
5 Clerk may issue such warrant.
6. Form of bench warrant in certain cases.
7. Bench warrant in case of misdemeanor.
8. In such case, amount of bail to be indorsed on warrant.
9. Bench warrant, how served
10 Magistrate of another county, how to proceed in admitting to bail.
11. Certificate of such magistrate on warrant.
12 Court may order defendant to be committed.
13. If defendant present, must be committed.
14. Court must inform defendant of his rights to counsel.
15. Arraignment, how made.
16 Defendant must be asked to give his true name.
17. Defendant allowed one day to answer.
18. Defendant may demur or plead to answer.

SECTION 1. When the indictment is filed, the defendant shall be

Defendant how arraigned.

arraigned thereon before the court in which it is found, if it be triable therein; or, if not, before the court to which it is sent or removed.

When defendant must be present.

SEC. 2. If the indictment be for a felony, the defendant shall be personally present; but if for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel.

Court may direct officer to arraign defendant.

SEC. 3. When his personal appearance is necessary, if he be in custody, the court may direct the officer in whose custody he is, to bring him before it to be arraigned; and the officer shall do so accordingly.

When bench warrant may issue.

SEC. 4. If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear to be arraigned when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail, or the money deposited, may direct the clerk to issue a bench warrant for his arrest.

Ib. How issued.

SEC. 5. The clerk, on the application of the district attorney, may, accordingly, at any time after the order, whether the court be sitting or not, issue a bench warrant into one or more counties.

Ib. Form of.

SEC. 6. The bench warrant upon the indictment shall, if the offence be a felony, be substantially in the following form:

*The District Court for the county of ———, and territory of Oregon:*

In the name of the United States, to any sheriff (or other proper officer) in the territory of Oregon—An indictment having been found on the —— day of ———, A. D. 18—, in the District Court for the county of ———, charging C. D. with the crime of, (designating it generally,) you are therefore commanded forthwith to arrest the above named C. D. and bring him before this court, (or if the venue has been changed, take him before that court, as the case may be,) to answer the indictment; or if the court have adjourned for the term, that you deliver him into custody of the jailor of the county (or city) of ———, the —— day of ———, A. D. 18—.

By order of the court.

E. F., *Clerk.*

Ib.

SEC. 7. If the offence be a misdemeanor, the bench warrant shall be in a similar form, adding to the body thereof a direction to the following effect: "or if he require it, that you take him before any magistrate in that county, or in the county in which you arrest him, that he may give bail to answer the indictment."

Amount of bail to be indorsed on warrant.

SEC. 8. If the offence charged be bailable, the court, upon directing the bench warrant to issue, shall fix the amount of bail, and an indorsement shall be made upon the bench warrant, and signed by the clerk, to the following effect: "The defendant is to be admitted to bail in the sum of ——— dollars.

Bench warrant, how served.

SEC. 9. The bench warrant may be served in any county in the same manner as a warrant of arrest.

Magistrate of another

SEC. 10. If the defendant be brought before a magistrate of county, how to proceed.

another county, for the purpose of giving bail, the magistrate shall proceed, in respect thereto, in the same manner as if the defendant had been brought before him upon a warrant of arrest.

Ib. Must certify on warrant.

SEC. 11. On taking bail, the magistrate shall certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant; the officer shall then discharge the defendant from arrest, and, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

Court may order commital.

SEC. 12. When the indictment is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the indictment is presented or sent, or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in the increased amount to be specified in the order.

If present, must be committed.

SEC. 13. If the defendant be present when the order is made, he shall be forthwith committed accordingly; if he be not present, a bench warrant shall be issued and proceeded upon in the manner provided in this chapter.

Defendant's right to counsel.

SEC. 14. If the defendant appear without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned; and he shall be asked if he desire the aid of counsel.

Arraignment.

SEC. 15. The arraignment shall be made by the court, or by the clerk or district attorney under its direction, and shall consist in reading the indictment to the defendant, and delivering to him a copy thereof, and of the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

Defendant must be asked his name.

SEC. 16. When the defendant is arraigned, he shall be informed that if the name by which he is indicted be not his true name, he shall then declare his true name, or be proceeded against by the name in the indictment.

One day to answer.

SEC. 17. If, on the arraignment, the defendant require it, he shall be allowed until the next day, or such further time may be allowed him as the court may deem reasonable to answer the indictment.

May demur or plead.

SEC. 18. If the defendant do not require time as provided in the last section, or if he do, then on the next day, or at such further day as the court may have allowed him, he may, in answer to the arraignment, either move the court to set aside the indictment, or may demur or plead thereto.

# CHAPTER XXIII.

## SETTING ASIDE INDICTMENT.

SEC. 1. Indictment may be set aside on motion.
2. Consequence of neglecting to make such motion.
3. Motion when heard.
4. If denied, defendant must demur or plead.
5. If granted, defendant to be discharged, unless, &c.
6. Effect of order for resubmission.
7. If new indictment not found, court to make order of discharge.
8. Order to set aside an indictment, no bar to future action.

Indictment, when set aside on motion.

SECTION 1. The indictment shall be set aside by the court in which the defendant is arraigned, and upon his motion, in either of the following cases:

1. When it is not found indorsed and presented according to statute;

2. When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment, or indorsed thereon;

3. When a person is permitted to be present during the session of the grand jury, while the charge embraced in the indictment was under consideration, except such persons as are permitted to be present by statute.

Neglecting to make motion.

SEC. 2. If the motion to set aside the indictment be not made, the defendant shall be precluded from afterwards taking the objections mentioned in the last section.

Motion, when heard.

SEC. 3. The motion shall be heard at the time of the arraignment, unless for good cause the court postpone the hearing to another time.

If denied, &c.

SEC. 4. If the motion be denied, the defendant shall immediately answer the indictment, either by demurring or pleading thereto.

If granted, &c.

SEC. 5. If the motion be granted, the court shall order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him, unless it direct that the case be resubmitted to the same or another grand jury.

Order for resubmission.

SEC. 6. If the court direct that the case be resubmitted, the defendant, if already in custody, shall so remain, unless he be admitted to bail; or if already admitted to bail, or money have been deposited instead thereof, the bail or money shall be answerable for the appearance of the defendant to answer a new indictment.

If new indictment not found; order of discharge.

SEC. 7. Unless a new indictment be found before the next grand jury of the county is discharged, the court shall, on the discharge of such grand jury, make the order prescribed by section five.

Order to set aside, no bar to future action.

SE.C 8. An order to set aside an indictment as provided in the preceding sections, shall be no bar to a future prosecution for the same offence.

# CHAPTER XXIV.

## DEMURRER

SEC. 1. Pleadings of defendant.
2. Demurrer, when filed.
3. When defendant may demur.
4. Demurrer, what to specify, must be in writing.
5. Objection on demurrer, when heard.
6. Judgment on demurrer final. and a bar to another action.
7. If case be not resubmitted, defendant discharged.
8. Proceedings if the case be resubmitted.
9 If demurrer disallowed. defendant may plead.
10. Certain objections to be taken advantage of by demurrer only.

SECTION 1. The only pleading on the part of the defendant shall be either a demurrer or a plea. Pleadings of defendant.

SEC. 2. Both the demurrer and the plea shall be put in open court, either at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose. Demurrer, and when filed.

SEC. 3. The defendant may demur to the indictment, when it appears from the face thereof either: When defendant may demur.

1. That the grand jury by which it was found had no legal authority to inquire into the offence charged, by reason of its not being within the local jurisdiction of the county;
2. That it does not substantially conform to the requirements of the statute;
3. That more than one offence is charged in the indictment;
4. That the facts stated do not constitute a public offence;
5. That the indictment contains any matter which, if true, would constitute a legal justification or excuse of the offence charged, or other legal bar to the prosecution.

SEC. 4. The demurrer shall be in writing, signed either by the defendant or his counsel; it shall distinctly specify the ground of the objection to the indictment, or it shall be disregarded. Demurrer, what to specify

SEC. 5. Upon the demurrer being filed, the objections presented thereby shall be heard, either immediately, or at such time as the court may appoint. Objection, when heard.

SEC. 6. Upon considering the demurrer, the court shall give judgment either allowing or disallowing it, and an order to that effect shall be entered upon the minutes. Judgment, how given.

SEC. 7. If the demurrer be allowed, the judgment shall be final upon the indictment demurred to, and shall be a bar to another prosecution for the same offence, unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, direct the case to be resubmitted to the same or another grand jury. When judgment on demurrer final, and a bar, &c.

SEC. 8. If the court do not direct the case to be resubmitted, the defendant, if in custody, shall be discharged; or if admitted to bail, his bail shall be exonerated; or if he have deposited money instead of bail, the money shall be refunded to him. If case not resubmitted

Proceedings if resubmitted. SEC. 9. If the court direct that the case be submitted anew, the same proceedings shall be held thereon as are prescribed in sections six and seven of the preceding chapter.

If demurrer be disallowed, defendant may plead. SEC. 10. If the demurrer be disallowed, the court shall permit the defendant, at his election, to plead—which he shall do forthwith, or at such time as the court may allow; if he do not plead, judgment shall be pronounced against him.

Certain objections to be demurred to. SEC. 11. When the objections mentioned in section three appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a public offence, may be taken at the trial, under the plea of not guilty and in arrest of judgment.

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# CHAPTER XXV.

## OF PLEAS.

SEC. 1. Three kinds of plea to indictment.
2 Plea, how made.
3. Plea, how entered.
4. Plea of guilty must be put in by defendant, except in case of incorporation.
5. Plea of guilty may be withdrawn.
6 *Plea of not guilty, what a denial of.*
7. What may be given in evidence under a plea of not guilty.
8. When acquittal not a bar to another prosecution.
9 & 10. When acquittal a bar to another prosecution.
11. Not guilty to be entered when defendant refuses to plead.

Three kinds of pleas to indictment. SECTION 1. There are three kinds of pleas to an indictment: a plea of

1. Guilty;
2. Not guilty;
3. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

Plea, how made. SEC. 2. Every plea shall be oral, and shall be entered upon the minutes of the court.

Plea, how to be entered. SEC. 3. The plea shall be entered in substantially the following form:

1. If the defendant plead guilty: "The defendant pleads that he is guilty of the offence charged in this indictment;"

2. If he plead not guilty: "The defendant pleads that he is not guilty of the offence charged in this indictment;"

3. If he plead a former conviction or acquittal: "The defendant pleads that he has already been convicted or acquitted (as the case may be) of the offence charged in this indictment, by the judgment of the court of ——, (naming it,) rendered at ———, (naming the place,) on the —— day of ———."

Plea of guilty, how put in. SEC. 4. A plea of guilty can in no case be put in, except by the defendant himself in open court, unless upon an indictment against a corporation, in which case it may be put in by counsel.

SEC. 5. The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

Ib May be withdrawn.

SEC. 6. The plea of not guilty is a denial of every material allegation in the indictment.

Plea of not guilty a denial.

SEC. 7. All matters of fact tending to establish a defence other than that specified in the third subdivision of section three, may be given in evidence under the plea of not guilty.

Evidence under plea of not guilty.

SEC. 8. If the defendant were formerly acquitted on the ground of a variance between the indictment and the proof, or the indictment were dismissed upon an objection to its form or substance without a judgment of acquittal, it shall not be an acquittal of the same offence.

When acquittal not a bar to another prosecution.

SEC. 9. When, however, he was acquitted on the merits, he shall be deemed acquitted of the same offence, notwithstanding a defect in the form or substance of the indictment on which he was acquitted.

Ib When a bar, &c

SEC. 10. When the defendant shall have been convicted or acquitted upon an indictment for an offence consisting of different degrees, the conviction or acquittal is a bar to another indictment for the offence charged in the former, or for any inferior degree of that offence, or for an attempt to commit the same, or for an offence necessarily included therein, of which he might have been convicted under that indictment.

Acquittal, when a bar

SEC. 11. If the defendant refuse to answer the indictment by demurrer or plea, a plea of not guilty shall be entered.

If defendant refuses to plead, &c.

# CHAPTER XXVI.

## OF THE CHANGE OF VENUE IN CRIMINAL CASES.

SEC 1. Criminal cases, where tried
2 Proceedings when venue is changed to another county.
3 When venue is changed, defendant must recognize
4. When venue is changed, witness must recognize
5. District attorney may apply for change of venue

SECTION 1. All criminal cases shall be tried in the county where the offence was committed, except where otherwise provided by law, unless it shall appear to the satisfaction of the court, by affidavit, that a fair and impartial trial cannot be had in such county, in which case the court before whom the cause is pending, if the offence charged in the indictment be punishable with death or imprisonment in the penitentiary, may direct the person accused to be tried in some adjoining county, where a fair and impartial trial can be held; but the party accused shall be entitled to a change of venue but once, and no more.

Criminal cases, where tried.

SEC. 2. When the venue is changed to an adjoining county, in a criminal case, the trial shall be conducted in all respects as if the indictment had been found in the county to which the venue is

Proceedings when venue changed.

changed; and the costs accruing from a change of venue shall be paid by the county in which the offence was committed.

Ib. Defendant must recognize to appear. SEC. 3. When the court has ordered a change of venue, they shall require the accused, if the offence be bailable, to enter into recognizance with good and sufficient sureties, to be approved by the court or judge, in such sum as the court or judge may direct, conditioned for his appearance in the court to which the venue is changed, at the first day of the next term thereof, and abide the order of such court; and, in default of such recognizance, a warrant shall be issued, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he or she is to be tried, there to be safely kept by the jailor thereof until discharged by due course of law.

Ib. Witnesses to recognize. SEC. 4. When a change of venue is allowed, the court shall recognize the witnesses on the part of the territory, to appear before the court in which the prisoner is to be tried.

District attorney may apply for change of venue. SEC. 5. The district attorney, on behalf of the territory, may also apply for a change of venue; and the court, being satisfied that it will promote the ends of justice, may award a change of venue upon the same terms, and to the same extent that are provided in this chapter; and the proceedings on such change of venue, shall be, in all respects, as above provided.

## CHAPTER XXVII.

### ISSUES.

SEC. 1. Issues of fact defined.
2. Issues of fact, how tried.
3. When defendant must be present on trial.

Issues of fact defined. SECTION 1. An issue of fact arises:

1. Upon a plea of not guilty; or

2. Upon a plea of a former conviction or acquittal of the same offence.

Ib. How tried. SEC. 2. An issue of fact shall be tried by a jury of the county in which the indictment was found, unless the action be removed by order of the court, as provided in this chapter.

When defendant must be present. SEC. 3. If the indictment be for a misdemeanor, trial may be had in the absence of the defendant, if he appear by counsel; but if for a felony, he shall be personally present.

## CHAPTER XXVIII.

### CRIMINAL CALENDAR.

SEC. 1. Clerk to prepare calender.
2. Issues on calendar, how disposed of.
3. Clerk to keep register; what to contain.
4. Register to be submitted to court at commencement of term.

SECTION 1. The clerk shall prepare a calendar of the indictments pending to be tried at the term, enumerating them according to the date of the filing of the indictments, and specifying opposite to the title of each action whether it be for a felony or a misdemeanor, and whether the defendant be in custody or on bail; and shall in like manner enter therein all indictments found during the term, and on which issues of facts are joined.

Clerk to prepare calendar.

SEC. 3. The issues on the calendar shall be disposed of in the following order, unless, upon the application of either party, for good cause, the court direct an indictment to be tried out of its order:

Issues on calendar, how disposed of.

1. Indictments for felony, when the defendant is in custody;
2. Indictments for misdemeanors, when the defendant is in custody;
3. Indictments for felony, when the defendant is on bail;
4. Indictments for misdemeanors, when the defendant is on bail;

SEC. 3. The clerk shall keep a register of all the criminal actions in the court, in which he shall enter:

Clerk to keep register

1. All cases returned to the court by a magistrate;
2. All indictments found in the court, or sent, or removed thereto for trial, with the time of finding the indictments, or when they were sent or removed; and
3. The time of arraignment of the demurrer or plea, and of the trial, conviction or acquittal of the defendant, together with a brief note of all the other proceedings in the action.

Ib What to contain.

SEC. 4. The register shall be submitted to the court at its opening at every term.

Ib When to be submitted to court.

# CHAPTER XXIX.

## OF POSTPONEMENT OF TRIAL.

SEC. 1. When cause may be postponed; affidavit must be filed.
2. When defendant discharged, unless cause be shown for postponement.
3. Order of discharge not to bar another prosecution.

SECTION 1. When an indictment is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by the affidavit of the defendant, or the statement of the district attorney, direct the trial to be postponed to another day in the same term, or to another term; all affidavits read upon the application, shall at the same time be filed with the clerk.

When cause may be postponed.

Affidavits must be filed

SEC. 2. If, when the indictment is called for trial, the defendant appear and be ready for trial, and the district attorney be not ready, the court may order the indictment to be discharged, unless, being of the opinion that the public interests require the indictment to be retained for trial, it direct it to be so retained.

When defendant discharged, unless, &c.

SEC. 3. If the court order the indictment ~~to~~ be discharged, the order shall not be a bar to another prosecution for the same offence, unless the court so direct; if the court so direct, judgment of acquittal shall be entered.

Order not a bar to another prosecution, unless, etc.

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# CHAPTER XXX.

## OF CHALLENGING JURORS.

SEC. 1. Trial juries, how formed.
2. Challenge defined.
3. Defendants must join in challenge.
4. Challenge to panel defined.
5. Challenge to panel, on what founded.
6. Challenge to panel, when and how taken.
7. An adverse party may except to challenge.
8. On such challenge, court how and when to proceed.
9. Denial of challenge, how made, and trial thereof.
10. Who may be examined on trial of challenge.
11. If challenge allowed, jury to be dismissed
12. Defendant to be informed of right to challenge individual juror.
13. Different kinds of challenge to juror.
14. Challenge, when to be taken.
15 Peremptory challenge defined.
16. Number defendant entitled to.
17 Challenge for cause defined.
18. General causes of challenge.
19. Particular causes of challenge.
20. Grounds of challenge for implied bias.
21. Grounds of challenge for actual bias.
22. Exemption, not a ground of challenge.
23. Causes of challenge, how stated.
24. Exception to challenge, and denial thereof.
25. Challenge, how tried if denied.
26. Juror challenged, may be examined.
27. Rules of evidence on trial of challenge.
28. Juror, when excluded.
29. Challenge to be first by defendant, then by territory.
30. Order of challenge.
31 When peremptory challenge may be taken.
32. Form of oath to be administered to jurors.
33. Jurors may affirm.
34. Court may order a view by the jury.
35. Proceedings when defendant has been in part acquitted.
36. When defendant, charged with assault, with intent to commit felony may be convicted of assault.
37. Verdict in case of insanity.
38. Defendant, when not liable to costs.

Trial juries, how formed. SECTION 1. Trial juries for criminal actions, shall be formed in the same manner as trial juries for civil actions.

Challenge defined. SEC. 2. A challenge is an objection made to the trial jury, and is of two kinds:

1. To the panel;
2. To an individual juror.

Defendants must join challenge. SEC. 3. When several defendants are tried together, they cannot sever the challenges, but shall join therein.

Challenge to panel. SEC. 4. A challenge to the panel is an objection made to all the petit jurors returned, and may be taken by either party.

Ib. On what founded. SEC. 5. A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury.

How taken. SEC. 6. A challenge to the panel shall be taken before a jury is sworn, and shall be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

When adverse party may except.

SEC. 7. If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge; the exception need not be in writing, but shall be entered upon the minutes of the court; and thereupon the court shall proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

Court how then to proceed.

SEC. 8. If, on the exception, the court deem the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his exception, and to deny the facts alleged in the challenge; if the exception be allowed, the court may in like manner permit an amendment of the challenge.

Denial and trial of challenge.

SEC. 9. If the challenge be denied, the denial may in like manner be oral, and shall be entered upon the minutes of the court, and the court shall proceed to try the question of fact.

Who examined on trial of challenge.

SEC. 10. Upon the trial of the challenge, the officer, whether judicial or ministerial, whose irregularity is complained of, as well as any other person, may be examined to prove or disprove the facts alleged as the ground of the challenge.

If challenge allowed, jury dismissed.

SEC. 11. If, either upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court shall discharge the jury so far as the trial of the indictment in question is concerned, and no other jury for the trial thereof can be summoned for the same term; if it be disallowed, the court shall direct the jury to be impanneled.

Defendant to be told of his right to challenge jurors.

SEC. 12. Before a juror is called, the defendant shall be informed by the court, or under its direction, that if he intend to challenge an individual juror, he shall do so when the juror appears, and before he is sworn.

Kinds of challenge.

SEC. 13. A challenge to an individual juror is either:
1. Peremptory; or,
2. For cause.

When to be taken

SEC. 14. It shall be taken when the juror appears, and before he is sworn; but the court may, for good cause, permit it to be taken after the juror is sworn, and before the jury is completed.

Peremptory challenge.

SEC. 15. A peremptory challenge is an objection to a juror for which no reason need be given, but upon which the court shall exclude him.

Ib. Number defendant entitled to.

SEC. 16. If the offence charged be punishable with death, or imprisonment in the penitentiary for life, the defendant shall be entitled to twenty peremptory challenges; on a trial for any other offence, he shall be entitled to five peremptory challenges, and the prosecution shall be entitled to ten peremptory challenges in cases where the punishment is death or imprisonment in the penitentiary for life, and three in all other cases.

Challenge for cause.

SEC. 17. A challenge for cause may be taken either by the territory or the defendant; it is an objection to a particular juror, and shall be either:

1. General, that the juror is disqualified from serving in any case; or

2. Particular, that he is disqualified from serving in the case on trial.

Causes of challenge.

SEC. 18. General causes of challenge are:

1. A conviction for a felony;

2. A want of any of the qualifications prescribed by the laws to render a person a competent juror;

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body, as renders him incapable of performing the duties of a juror.

Particular causes.

SEC. 19. Particular causes of challenge are of two kinds:

1. For such a bias as, when the existence of the facts is ascertained in judgment of law, disqualifies the juror, and which is known in this statute as implied bias;

2. For the existence of a state of mind on the part of a juror in reference to the case, or to either party, which satisfies the trier, in the exercise of a sound discretion, that he cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this statute as actual bias.

Grounds of challenge for implied bias.

SEC. 20. A challenge for implied bias may be taken for all or any of the following causes, and no other:

1. Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or to the defendant;

2. Standing in relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offence charged, or on whose complaint the prosecution was instituted, or in his employment on wages;

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him in a criminal prosecution;

4. Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment;

5. Having served on a trial jury, which has tried another person for the offence charged in the indictment;

6. Having been one of a jury formerly sworn to try the same indictment, and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it;

7. Having served as a juror in a civil action brought against the defendant, for the act charged as an offence;

8. If the offence charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he shall not be permitted to serve as a juror.

Ib. For actual bias.

SEC. 21. A challenge for actual bias may be taken for the cause mentioned in the second subdivision of section nineteen, and for no other cause.

Exemption not a ground for challenge.

SEC. 22. An exemption from service on a jury shall not be cause of challenge, but the privilege of the person exempted.

Causes of challenge, how stated.

SEC. 23. In a challenge for implied bias, one or more of the causes stated in section twenty shall be alleged; in a challenge for actual bias, the cause stated in the second subdivision of section nineteen shall be alleged; in either case the challenge may be oral, but shall be entered upon the minutes of the court.

Exception to challenge and denial thereof.

SEC. 24. The adverse party may except to the challenge in the same manner as to a challenge to a panel, and the same proceedings shall be had thereon, except, that if the exception be allowed, the juror shall be excluded; the adverse party may also orally deny the facts alleged as the ground of challenge.

How tried if denied.

SEC. 25. If the facts be denied, the challenge shall be tried by the court, whether it be for implied or actual bias.

Juror challenged may be examined.

SEC. 26. Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and shall be bound to answer every question pertinent to the inquiry therein.

Rules of evidence.

SEC. 27. Other witnesses may also be examined on either side; and the rules of evidence applicable to the trial of other issues, shall govern the admission or exclusion of testimony on the trial of the challenge.

Juror, when excluded.

SEC. 28. The court shall determine the law and fact, and shall either allow or disallow the challenge, and direct an entry accordingly upon the minutes; if the challenge be allowed, the juror shall be excluded.

Challenge, first by defendant.

SEC. 29. All challenges to an individual juror, except peremptory, shall be taken first by the defendant, and then by the territory, and each party shall exhaust all his challenges to each juror, as he is called, before the other begins.

Order of challenges.

SEC. 30. The challenges of either party need not all be taken at once; but they may be taken separately in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel;
2. To an individual juror for a general disqualification;
3. To an individual juror for implied bias;
4. To an individual juror for actual bias.

Peremptory, when may be taken.

SEC. 31. If all the challenges on both sides be disallowed, either party may still take a peremptory challenge, unless the peremptory challenges be exhausted.

Form of oath.

SEC. 32. The following oath shall be administered to all jurors for the trial of all criminal cases not capital: "You shall well and truly try the issue between the territory of Oregon and the defendant, (or defendants, as the case may be,) according to the evidence: so help you God." In capital cases, the following oath shall be administered to the jurors: "You shall well and truly try, and true deliverance make, between the territory of Oregon and the prisoner at the bar, whom you shall have in charge, according to evidence: so help you God."

Jurors may affirm.

SEC. 33. Any juror who is conscientiously scrupulous of taking either of the oaths above prescribed, shall be allowed to make affirmation, substituting the words, "This you do under the pains and penalties of perjury;" instead of the words "So help you God."

Court may order a view.

SEC. 34. The court may order a view by any jury impanneled to try a criminal case.

When defendant is in part acquitted.

SEC. 35. Whenever any person indicted for a felony shall, on trial, be acquitted, by verdict, of part of the offence charged in the indictment, and convicted of the residue thereof, such verdict may be received and recorded by the court; and thereupon the person charged shall be adjudged guilty of the offence, if any, which shall appear to the court to be substantially charged by the residue of such indictment, and shall be sentenced and punished accordingly.

When defendant, charged with assault with intent to commit felony, may be convicted of assault.

SEC. 36. In all cases of indictment, in the District Court, for assault with intent to commit any felony, it may be lawful for the jury, in case they do not find the felonious intent charged, to convict of the assault; and the court shall have power to sentence the person so convicted, to be punished by imprisonment in the jail of the county for a term not exceeding one year, or by fine not exceeding five hundred dollars.

Verdict in case of insanity.

SEC. 37. When any person indicted for an offence shall, on trial, be acquitted by the jury by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, or may give him into the care of his friends, if they shall give bonds, with surety, to the satisfaction of the court, conditioned that he shall be well and securely kept, otherwise he shall be discharged.

Defendant, when not liable for costs.

SEC. 38. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any cost or fees of officers, or for any charge for subsistence while he was in custody.

# CHAPTER XXXI.

## APPEALS FROM JUSTICES OF THE PEACE

SEC. 1. Appeal from conviction of justice.
2 Copy of conviction to be filed
3. Costs on appeal.
4. Recognizance of appellant, when forfeited.
5. Proceedings on suit, brought on recognizance.
6. New trial of indictment, when granted.
7. Exception to judgment or decision of District Court by defendant.
8. Questions of law that may be prosecuted to Supreme Court
9. When, in such cases, defendant may recognize to appeal.
10. Proceedings if defendant does not recognize.

Appeal from conviction of justice.

SECTION 1. Every person convicted before a justice of the peace of any offence, may appeal from the sentence to the District Court, then next to be held in the same county, and such appellant shall be committed to abide the sentence of said justice, until he shall recognize to the territory in such reasonable sum, with such sureties as said justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the meantime to keep the peace, and be of good behavior.

Copy of conviction, etc., to be filed.

SEC. 2. The justice on such appeal shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any shall be taken, to the clerk of the court appealed to; and the fees of the justice therefor shall be paid out of the county treasury, in like manner as other costs in criminal prosecutions are paid.

Costs on appeal.

SEC. 3. The appellant shall not be required to advance any fees in claiming his appeal, nor in prosecuting the same; but if convicted in the District Court, or if sentenced for failing to prosecute his appeal, he may be required, as a part of the sentence, to pay the whole or any part of the costs of prosecution.

Recognizances of appellant, when forfeited.

SEC. 4. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the District Court may award sentence against him for the offence whereof he was convicted, in like manner as if he had been convicted thereof in that court; and if he be not then in custody, process may be issued to bring him into court to receive sentence.

Proceedings on suit brought on recognizance

SEC. 5. Whenever, upon suit brought upon any recognizance to prosecute an appeal, the penalty thereof shall be adjudged to be forfeited, or when, by leave of the court, such penalty shall have been paid to the county treasurer or to the clerk of the District Court, without a suit, or before judgment shall be given in a manner by law provided, if by law any forfeiture shall accrue to any person by reason of the offence of which the appellant was convicted, the court may award to him such sum as he may be entitled to out of such forfeiture.

New trial, when granted.

SEC. 6. The District Court may, at the term in which the trial of any indictment may be had, or within one year thereafter, or the Supreme Court within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court may direct.

Exceptions to judgment or decision of district court.

Effect of exceptions.

SEC. 7. Any person who shall be convicted of an offence before the District Court, being aggrieved by any opinion, direction, or judgment of the court, in any matter of law, may allege exceptions to such opinion, direction, or judgment; which exceptions, being reduced to writing in a summary mode, and presented to the court at any time before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the judge, and thereupon all further proceedings in that court shall be stayed, unless it shall clearly appear to the judge that such exceptions are frivolous, immaterial, or intended only for delay; and, in that case, judgment may be entered, and sentence awarded in such manner as the judge may deem reasonable, notwithstanding the allowance of such exceptions.

Questions of law that may be prosecuted to Supreme Court.

SEC. 8. If, upon the trial of any person who shall be convicted in said District Court, any question of law shall arise, which, in the opinion of the judge, shall be so important or so doubtful as to require the decision of the Supreme Court, he shall, if the defendant desire it, or consent thereto, report the case, so far as may be necessary to present the question of law arising therein, and thereupon all proceedings in that court shall be stayed.

When in such case defendant may recognize to appear.

SEC. 9. Any person being accused of an offence not punishable with death, or imprisonment in the penitentiary for a term not exceeding three years, who shall file exceptions, or for whose benefit a report shall be made by the judge, and proceedings stayed, as is provided in the two preceding sections, may recognize to the territory in such sum as the judge may order, with sufficient sureties for his personal appearance at the Supreme Court of the next term thereof, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the mean time keep the peace and be of good behavior; and the judge may, in his discretion, allow any person so to recognize, charged with an offence not punishable with death.

When in such case defendant to be committed

Filing copy of record.

Judgment of Supreme Court.

SEC. 10. If any person so filing exceptions, or desiring a report to be made by the judge, shall not so recognize, he shall be committed to prison to await the decision of the Supreme Court; and, in that case, the clerk of the court in which the conviction was had shall file a certified copy of the record and proceedings in the case in the Supreme Court, and the court shall have cognizance thereof, and consider and decide the questions of law, and shall render judgment, and award such sentence, or make such order thereon, as law and justice shall require; and if a new trial be ordered, the cause shall be remanded to the said District Court for such new trial; but the proceedings here prescribed shall not deprive any party of his writ of error for an error or defect appearing of record.

# CHAPTER XXXII.

## WRITS OF ERROR.

SEC. 1. Writs of error on conviction for capital offences, how allowed.
2. Writs of error in other cases are writs of right; when to stay proceedings.
3. Application how made.
4. Return to writ of error, by whom made, what to contain.
5. Custody of the defendant, on request to be taken before judge of Supreme Court. to give bail.
6. Admitting to bail; recognizance how filed
7. Judgment of Supreme Court on affirmance or reversal
8. If court be equally divided, cause to stand continued.

Writs of error in capital cases. 2 Comst. 9

SEC. 1. In all cases of final judgment rendered upon an indictment, a writ of error to the Supreme Court may be allowed to the defendant. In capital cases this shall not be permitted, except upon the allowance of a judge of the Supreme Court, and after sufficient notice to the district attorney of the time and place of making the application.

In other cases writs of right. 2 Barb. 450

When to stay proceedings.

SEC. 2. In all other than capital cases, writs of error shall issue as a matter of course, upon a mere application to the clerk of the Supreme Court, in term or vacation; but the writ shall not operate as a stay of proceedings, unless allowed in the manner provided in the preceding section.

Application how made.

SEC. 3. Applications for such allowance shall in all cases be made upon a transcript of the indictment and bill of exceptions, or other record, upon which error is alleged under the seal of the court where the indictment was tried.

Return of writ.

SEC. 4. Upon filing the writ of error and the allowance of the judge, (if such allowance has been made,) with the clerk of the court where the indictment was tried, he shall forthwith make returns thereto, containing a like transcript as is required in the last preceding section.

Custody of defendant.

SEC. 5. If a stay of proceedings be allowed, the sheriff, upon being served with the district clerk's certificate thereof, shall cease all further proceedings in execution of the sentence, but shall retain the defendant in custody, and at his request take him before one of the judges of the Supreme Court, for the purpose of giving bail if the offence charged be bailable.

Admitting to bail.

SEC. 6. Such judge may admit the defendant to bail by recognizance, with sufficient surety; such recognizance shall be filed with the clerk of the Supreme Court.

Judgment. 3 Denio 91; 2 Barb. 453.

SEC. 7. If the judgment below be affirmed, the sentence there pronounced shall be executed accordingly. If it be reversed, the Supreme Court may grant a new trial, or discharge the defendant altogether. In either case, the certificate of the clerk of the Supreme Court, under the seal of said court, shall be sufficient authority for the court below and its officers to act in the premises.

If court be equally divided.

SEC. 8. Whenever the Supreme Court shall be equally divided in opinion on hearing a writ of error, the cause shall stand continued until all the judges are on the bench.

# CHAPTER XXXIII.

## JUDGMENT IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

SEC. 1. Power of court to require surety of peace, &c., from convicts.
2. Proceedings in case of breach of such recognizance.
3. When judgment against prosecutor for costs; county to pay costs in other cases.
4. When clerk shall deliver transcript of conviction to sheriff.
5. In case of punishment in territorial prison, sentence how made.
6. Sentence, when no jail in county.
7. Death warrant, how signed and attested; what to contain.
8. Punishment of death, how and by whom inflicted.
9. Sheriff's warrant, &c., where to be filed, clerk to subjoin abstract, &c.

Surety of peace by convicts.

SEC. 1. Every court before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the penitentiary, or county jail, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

Proceedings in case of breach of recognizance.

SEC. 2. In case of the breach of the conditions of any such recognizance, the same proceedings shall be had, that are by law prescribed in relation to recognizances to keep the peace.

Judgment against prosecutor for costs.

SEC. 3. In all criminal cases, other than for a felony, if the defendant be acquitted, and the court shall deem the prosecution to have been unfounded, frivolous or malicious, it shall enter judgment against the prosecutor for the costs of prosecution and the necessary costs for the defence; and execution shall issue therefor. In all other cases of acquittal the county shall pay such costs, to be taxed by the court under the supervision of the prosecuting attorney.

Ib. When by county.

Clerk to deliver transcript of conviction to sheriff.

SEC. 4. Whenever any person convicted of any offence shall be sentenced to pay a fine or costs, or to be imprisoned in the penitentiary or county jail, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or his deputy, a transcript from the minutes of the court of such conviction and sentence, duly certified by such clerk, which shall be sufficient authority for such sheriff to execute such sentence; and he shall execute the same accordingly.

Punishment in territorial prison; sentence, how made.

SEC. 5. In every case in which punishment in the penitentiary is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor; and he may also be sentenced to solitary imprisonment for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such punishment, the solitary imprisonment shall precede the punishment by hard labor, unless the court shall otherwise order.

Sentence, when no jail in the county.

SEC. 6. Whenever it shall appear to the court, at the time of passing sentence upon any convict, who is to be punished by confinement in the penitentiary or county jail, that there is no jail in the county in which the offence was committed, suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this territory in which there may be a jail suited for that purpose; and the expenses of such convict shall be borne, if such convict was sentenced to imprisonment in the county jail, by the county in which the offence was committed.

CHAP. 33.

Death warrant.

SEC. 7. When judgment of death is rendered, a warrant, signed by the judge, and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff; it shall state the conviction and judgment, and appoint a day in which the judgment shall be executed, which shall not be less than thirty nor more than sixty days from the time of judgment.

Punishment, how and by whom inflicted.

SEC. 8. The mode of inflicting punishment of death in all cases under this act, shall be by hanging by the neck until the person be dead; and the sheriff, and in case of his death, inability, or absence, the coroner of the county in which sentence of death shall have been pronounced, by virtue of this act, shall be the executioner; except in cases where a change of venue has been taken, in which case the prisoner shall be sent back and executed in the county in which the prosecution originated.

Sheriff's warrant, &c., to be filed. Abstract of clerk.

SEC. 9. The sheriff shall return and file with the clerk the warrant, with a statement of his doings thereon, and the clerk shall subjoin a brief abstract of such statement to the record of conviction and sentence.

## CHAPTER XXXIV.

### OF PARDONS.

SEC 1. Governor may grant pardons or reprieve.

Governor may grant pardons

SECTION 1. In all cases in which the governor is authorized to grant pardons, he may, upon the petition of the person convicted, grant a pardon upon such conditions and with such restrictions, and under such limitations as he may think proper, and he may issue his warrant to all public officers to carry into effect such constitutional pardon; which warrant shall be obeyed and executed instead of the sentence, if any, which was originally given. The governor may also, on good cause shown, grant respites or reprieves from time to time as he may think proper.

## CHAPTER XXXV.

### TIME FOR COMMENCING CRIMINAL ACTIONS.

SEC. 1. Prosecution for murder not barred by lapse of time.
2. Indictments for other felonies, within three years.
3. Indictments for misdemeanors, within two years
4. If defendant be absent from territory, secreted, &c., time of such absence not included in limitation.
5. Indictment when deemed found.

For murder.

SECTION 1. There shall be no limitation of time within which a prosecution for murder shall be commenced. It may be commenced at any time after the death of the person killed.

Other felonies

SEC. 2. An indictment for any other felony than murder, shall be found within three years after its commission.

Misdemean'r

SEC. 3. An indictment for any misdemeanor shall be found within two years after its commission.

Exceptions to the foregoing provisions.

SEC. 4. If the defendant shall absent himself from the territory, or shall secrete himself so as to prevent process being served upon him, the indictment may be found within the term herein limited after his coming within the territory, or within the reach of process, and no time during which defendant is not an inhabitant of, or usually resident within the territory, or shall secrete himself, shall be a part of the limitation.

Indictment when found.

SEC. 5. An indictment is found within the meaning of this chapter, when it is duly presented by the grand jury in open court, and there received and filed.

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# CHAPTER XXXVI.

## MISCELLANEOUS PROVISIONS.

SEC. 1. In case of doubt as to degree of guilt, may be convicted of the lowest degree.
2. Joint defendants may have separate hearings.
3. Co-defendant, how made a witness.
4. Co-defendant may be witness for other defendants.
5. Confession not evidence, if extorted by threats.
6. As to what constitutes rape.
7. Testimony of accomplice must be corroborated.
8. When juror must be sworn as witness.
9 Court to decide question of law.
10. Ib. Right of defendant to except; questions of fact to be decided by law.
11. Court must inform jury that they are exclusive judges of the facts.
12. Jury may retire or decide in court.
13. When defendant appearing on trial may be committed.
14 Jury may take with them papers received in evidence.
15 Jury may take with them notes of testimony.
16 When jury disagree as to testimony, may inquire of court.
17. If juror be taken sick, jury may be discharged.
18. Where jury may find defendant guilty of a less degree than that charged.
19. Jury may find defendant guilty, &c.
20. Jury may find part of defendants guilty of any offence charged in indictment.
21. Jury may be polled.
22. Clerk must record verdict.
23. Acquittal on grounds of insanity to be stated.
24. Court may hear circumstances in aggravation or mitigation of sentence.
25. Such circumstances, how introduced.
26. Justification of bail.
27. Clerk must issue blank subpœnas on application of either party.
28. When person held to answer, if indictment be not found at next term, prosecution to be dismissed.
29. If defendant on prosecution be not tried, when prosecution to be dismissed.
30. When court may order action to be continued.
31. Discharge of defendant on dismissal of action.
32 When court may dismiss action after indictment.
33. *Nolle prosequi* abolished.
34. When order of dismissal a bar to another action.
35. Stolen or embezzled property, how disposed of.
36. Stolen, &c., property to be returned to owners.

Doubt as to degree of guilt.

SECTION 1. When it appears that a defendant has committed a public offence, and there is reasonable ground of doubt, in which of two or more degrees he is guilty, he can be convicted of the lowest of these degrees only.

Joint defendants may have separate hearings, etc.

SEC. 2. When two or more defendants are jointly indicted for a felony, any defendant requiring it shall be tried separately; in other cases, defendants jointly indicted may be tried separately or jointly in the discretion of the court.

Co-defendant how made a witness.

SEC. 3. When two or more persons are included in the same indictment, the court may, at any time before the defendant has gone into his defence, on the application of the district attorney, direct any defendant to be discharged from the indictment, that he may be a witness for the territory.

May be witness for the other defendants.

SEC. 4. When two or more persons are included in the same indictment, and the court is of opinion that, in regard to a particular defendant, there is not sufficient evidence to put him on his defence, it shall order him to be discharged from the indictment before the evidence is closed, that he may be a witness for his co-defendant; the order shall be an acquittal of the defendant discharged, and a bar to another prosecution for the same offence.

Confession not evidence if extorted by threats.

SEC. 5. A confession of the defendant, whether made in the course of judicial proceedings, or to a private person, cannot be given in evidence against him, when made under the influence of fear produced by threats; nor is it sufficient to warrant his conviction, without proof that the offence charged has been committed.

What constitutes rape.

SEC. 6. Proof of actual penetration into the body is sufficient to sustain an indictment for rape, or for the crime against nature.

Accomplice's testimony must be corroborated.

SEC. 7. A conviction cannot be had upon the testimony of an accomplice, unless he be corroborated by such other evidence as tends to convict the defendant of the commission of the offence; and the corroboration is not sufficient if it merely show the commission of the offence, or the circumstances thereof.

When juror must be sworn as witness.

SEC. 8. If a juror have any personal knowledge respecting a fact in controversy in a cause, he shall declare it in open court during the trial; if, during the retirement of a jury, a juror declares a fact which could be evidence in a cause, as of his own knowledge, the jury shall return into court; in either of these cases the juror making the statement shall be sworn as a witness, and examined in the presence of the parties.

Courts shall decide questions of law.

SEC. 9. The court shall decide all questions of law which shall arise in the course of the trial.

Questions of fact, how decided.

SEC. 10. On the trial on an indictment for an offence, questions of law are to be decided by the court, except in cases of libel, saving the right of the defendant to except. Questions of fact by the jury. And although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court.

Charge to jury.

SEC. 11. In charging the jury, the court shall state to them all matters of law which it thinks necessary for their information, in giving their verdict; and, if it present the facts of the case, shall, in addition to what it may deem its duty to say, inform the jury that they are the exclusive judges of all questions of fact.

Jury may retire or decide in court.

SEC. 12. After hearing the charge, the jury may either decide in court, or may retire for deliberation; if they do not agree without retiring, one or more officers shall be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

When defendant on appearing, may be committed.

SEC. 13. When a defendant who has given bail, appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer of the county, to abide the judgment or further order of the court; and he shall be committed and held in custody accordingly.

Jury may take certain papers.

SEC. 14. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, or copies of such parts of public records or private documents given in evidence, as ought not, in the opinion of the court, to be taken from the person having them in possession.

Ib. Notes of testimony.

SEC. 15. The jury may also take with them notes of the testimony, or other proceedings on the trial taken by themselves, or any of them, but none taken by any other person.

When jury may inquire of the court.

SEC. 16. After the jury has retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they be desired to be informed of a point of law arising in the cause, they shall require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to the district attorney, and the defendant or his counsel.

Causes for discharging jury.

SEC. 17. If, at any time during the trial, any of the jury become so sick as to prevent the continuance of their duty, or any other accident or cause occur to prevent them being kept together for deliberation, the jury may be discharged by the court, and the trial commence anew at the same or another term.

Jury may find defendant guilty of less degree, &c.

SEC. 18. Upon an indictment for an offence consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the indictment, and guilty of any degree inferior thereto; upon an indictment for any offence, the jury may find the defendant not guilty of the commission thereof, and guilty of an attempt to commit the same; upon an indictment for murder, if the jury find the defendant not guilty thereof, they may, upon the same indictment, find the defendant guilty of manslaughter.

Ib.

SEC. 19. In all other cases the defendant may be found guilty of any offence, the commission of which is necessarily included in that which he is charged in the indictment.

Verdict as to part of defendants.

SEC. 20. On an indictment against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which judgment shall be entered accordingly, and the case as to the rest may be tried by another jury.

Jury may be polled.

SEC. 21. When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they shall be severally asked whether it is their verdict; and if any one answer in the negative, the jury shall be sent out for further deliberation.

Clerk must record verdict.

SEC. 22. When a verdict is given, and is such as the court may receive, the clerk shall immediately record it in full on the minutes, and shall read it to the jury, and inquire of them whether it is their verdict; if any juror disagree, the fact shall be entered upon the minutes and the jury again sent out; but if no disagreement be expressed, the verdict is complete, and the jury shall be discharged from the case.

Acquittal for insanity to be stated.

SEC. 23. If the defence to an indictment be the insanity of the defendant, the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict

Aggravating or mitigating circumstances.

SEC. 24. After a plea or verdict of guilty in a case where a discretion is conferred upon the court as to the extent of the punishment, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time, and upon such notice to the adverse party as it may direct.

Ib How introduced.

SEC. 25. The circumstances shall be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition shall be taken by a magistrate of the county, out of court, at a specified time and place, upon such notice to the adverse party as the court may direct.

Justification of bail.

SEC. 26. Bail shall, when requested by either party, or ordered by the court, judge or magistrate, justify by affidavit before the court, judge or magistrate, as the case may be.

Clerk to issue blank subpœnas.

SEC 27. The clerk of the court at which any indictment is to be tried, shall, at all times, upon the application of either party, issue as many blank subpœnas under the seal of the court, and subscribed by him as clerk, for witnesses within the territory as may be required.

Charge against person for public offence, when to be dismissed.

SEC. 28. When a person has been held to answer for a public offence, if an indictment be not found against him at the next term of the court at which he is held to answer, the court shall order the charge to be dismissed, unless good cause to the contrary be shown.

Ib If indictment be not tried.

SEC. 29. If a defendant indicted for a public offence, whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found, the court shall order the indictment to be dismissed, unless good cause to the contrary be shown.

Action may be continued

SEC. 30. If the defendant be not indicted or tried as is provided in the last two sections, and sufficient reason therefor be shown, the court may order the action to be continued from term to term, and in the meantime may discharge the defendant from custody, on his own undertaking, or on the undertaking of bail, for his appearance to answer the charge at the time to which the action is continued.

Discharge of defendant on dismissal of action. SEC. 31. If the court direct the action to be dismissed, the defendant shall, if in custody, be discharged therefrom; or, if admitted to bail, his bail shall be exonerated, or money deposited instead of bail shall be refunded to him.

Dismissal of action after indictment. SEC. 32. The court may, in its discretion, or upon the application of the district attorney, and in furtherance of justice, order an action after indictment to be dismissed; but in that case the reasons of the dismissal shall be set forth in the order, which shall be entered upon the minutes.

*Nolle prosequi* abolished. SEC. 33. The entry of a *nolle prosequi* is abolished, and the district attorney cannot discontinue or abandon a prosecution for a public offence, except as provided in the last section.

Dismissal, when a bar, &c. SEC. 34. An order for the dismissal of the action as provided in this chapter, shall be a bar to another prosecution for the same offence, if it be a misdemeanor; but it shall not be a bar, if the offence charged be a felony.

Stolen property, &c., how disposed of. SEC. 35. When property alleged to have been stolen or embezzled, comes into the custody of a peace officer, he shall hold it subject to the order of the magistrate authorized by the next section to direct the disposal thereof.

Ib When to be returned to owner. SEC. 36. On satisfactory proof of the title of the owner of the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, shall order it to be delivered to the owner, on his paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order shall entitle the owner to demand and receive the property.

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# CHAPTER XXXVII.

## OF JUDGMENT ROLL.

SEC 1. Judgment roll, how made and what to contain.
2. Copy of judgment, &c., how to be attested, for purposes of evidence.
3 Writ of error not to delay execution, unless ordered.
4. Consequences if defendant bailed after verdict not appearing.
5. This act, how to be construed.

Judgment roll, how made and what to contain. SECTION 1. When judgment upon a conviction is rendered, the clerk shall enter the same upon the minutes, stating briefly the offence for which the conviction has been had, and shall immediately annex together, and file the following papers, which constitute the judgment roll:

1. A copy of the minutes of challenge interposed by the defendant to the panel of the grand jury, or to an individual grand juror, and the proceedings and decision thereon;

2. The indictment, and a copy of the minutes of the plea or demurrer;

3. A copy of the minutes of a challenge, which may have been interposed to the panel of the trial jury, to an individual juror, and the proceedings and decision thereon;

4. A copy of the minutes of the trial;
5. A copy of the minutes of the judgment;
6. The bill of exceptions, if there be one.

Copy of minutes and judgment, when evidence.

SEC. 2. A copy of the minutes of any conviction and judgment, duly certified by the clerk in whose custody such minutes shall be, under his official seal, together with a copy of the indictment on which the conviction shall have been had, certified in the same manner, shall be evidence, in all courts and places, of such conviction and judgment, without the production of the judgment roll.

Writ of error not to delay execution, etc, unless,

SEC. 3. No writ of error shall stay or delay the execution of a judgment or execution thereon, in any criminal case, unless the same shall be allowed by a judge of the Supreme Court, with an express direction therein that the same is to operate as a stay of proceedings on the judgment upon which such writ shall be brought. And, upon such direction being given during the pendency of the writ of error, the defendant shall remain in custody, or be let to bail if it be a bailable offence.

Defendant bailed after trial, etc not appearing.

SEC. 4. If a defendant in any indictment shall have been let to bail after verdict or trial, and shall neglect to appear before any court or officer, at any time or place at which he is bound to appear, and submit to the jurisdiction of the proper court or officer, the court or officer before which he shall have been bound to appear, may cause such defendant to be arrested in the same manner as upon the finding of an indictment, and may direct his recognizance to be prosecuted.

This act how construed.

SEC. 5. Nothing in this act contained shall invalidate an action, suit, prosecution, process, pleading, or proceeding commenced, issued, had or taken before, or pending when it goes into effect.

SEC. 6. This act shall take effect and be in force from and after the first day of May next.

*Passed December* 22d, 1853.

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## *AN ACT* TO PROVIDE AGAINST DANGEROUS AND VICIOUS CATTLE.

SEC 1. Owners of vicious cattle, suffering them to run at large after notice, liable to to a fine; fine, how recovered.
2. Killing vicious cattle, when justifiable

Owners, when liable.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That any person or persons who own or are owners of dangerous and vicious cattle, which animal or animals are known to endanger the safety of persons travelling through neighborhoods, by their dangerous and vicious dispositions, such person or persons, having twelve hours' notice of the dangerous disposition of such animal or animals, and will not keep such cattle from disturbing the peace and safety of the neighborhood where such animals may range, such owner or owners shall be liable to a fine of not less than five dollars, nor exceeding fifty dollars, which may be recovered before any justice of the peace of the county, with costs of suit, for the use of the school fund.

When may be killed.

SEC. 2. That any person who should, in defence of himself or others, kill one or more cattle, shall not be liable to any damages for any such act done in self-defence.

*Passed 3d September*, 1849.

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## *AN ACT* TO PROHIBIT THE SALE OF ARMS AND AMMUNITION TO INDIANS.

SEC. 1. Sale of arms, &c., to Indians, how punished.
2. Prosecutions to be by indictment, where to be commenced.
3. Act, when to take effect.

Sale of arms, &c, to Indians, prohibited.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That if any white citizen, or other person than an Indian, shall sell, barter, or give to any Indian in this territory any gun, rifle, pistol or other kind of firearms, any powder, lead, percussion caps or other ammunition whatever, any person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not more than six months, nor less than one month, and by fine not exceeding five hundred, nor less than one hundred dollars.

Prosecutions how commenced.

SEC. 2. All prosecutions under the provisions of this act shall be by indictment before the District Court in the county where the offence shall have been committed, in the same manner that other offences may be prosecuted in this territory.

SEC. 3. This act to be in force from and after its passage.

*Passed January 16th*, 1854.

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## *AN ACT* TO PREVENT THE SALE OF ARDENT SPIRITS TO INDIANS.

SEC. 1. Persons selling ardent spirits to Indians, how punished.
2. All sheriffs, &c., required to complain of violations of this act; duty of judges of District Court.
3. Justice, when to issue warrant; jurisdiction of justice.
4. Moneys collected, to be appropriated to common school.
5. Act, when to take effect

Sale of spirituous liquors to Indians, how punished.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That if any tavern keeper, grocery keeper or other person or persons shall sell, barter or in any manner dispose of any spirituous liquor, or any other liquor of intoxicating quality, to any Indian or Indians within this territory, every such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, by indictment in any court having competent jurisdiction to try the same, shall forfeit and pay to the use of the county in which the offence may have been committed, a fine of not less than twenty-five dollars, and not more than five hundred dollars, and shall be committed to the jail in the county in which he or they may live, for the term of fifteen days.

Sheriffs, etc., required to complain, &c.

SEC. 2. All sheriffs, constables and justices of the peace within their respective counties, are hereby authorized and required, under the penalty of forfeiting their respective offices, to make complaint of such violations of this law as come within their knowledge, in their respective counties; and the judges of the several district courts in this territory are hereby required to give this act in special charge to the grand juries of their respective courts.

When justice to issue warrant.

SEC. 3. Upon complaint being made to any justice of the peace of the proper county in this territory, it shall be the duty of said justice to issue his warrant to any constable or the sheriff of his county, commanding him to bring said defendant forthwith before the said justice, who may proceed to hear and determine the case as in other cases of misdemeanor, whenever such justice shall be of opinion that the fine should be less than one hundred dollars; and where he is of opinion that it should exceed that sum, he shall bind him over to appear at the next term of the District Court, or commit him to the jail of the county in default of bail.

Justices' jurisdiction.

Moneys collected, how appropriated.

SEC. 4. All moneys collected in accordance with the provisions of this act shall be paid into the county treasury, to be applied to the use of common schools.

When to take effect.

SEC. 5. This act to be in force from and after its passage.

*Passed January 23d*, 1854.

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## *AN ACT* TO AMEND AN ACT, ENTITLED AN ACT TO PREVENT THE SALE OF ARDENT SPIRITS TO INDIANS, PASSED JANUARY 13TH, 1854.

SEC 1. A misdemeanor to sell liquor to Indians or half-breeds.
2. Part of prior act repealed.
3. Act, when to take effect.

Selling liquor to Indians.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That any person selling or furnishing in any way, intoxicating liquors to any Indian or Indians, or half-breed, who lives and associates with Indians, in this territory, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined in any sum not exceeding six hundred nor less than two hundred dollars.

SEC. 2. So much of the above named act as comes in conflict with this amendment, is hereby repealed.

Part of prior act repealed.

SEC. 3. This act to take effect and be in force from and after its passage.

*Passed December 20th*, 1854.

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## *AN ACT* TO PREVENT SABBATH BREAKING.

SEC 1. Sabbath, how to be observed. Proviso.
2 Penalty for offending, penalty, how appropriated.
3. This act when to take effect.

Sabbath, how to be observed.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That no person shall keep open his or her store, shop, grocery, ball alley, billiard saloon, tippling house, or any place of gaming or amusement, or do any secular business, other than works of necessity and mercy, on the first day of the week, commonly called the Lord's Day or Sunday; *Provided, however*, That this act shall not be so construed as to have effect where the circumstances of the case render it necessary that the above provision be not observed.

Proviso

Penalty for offending.

SEC. 2. Any person offending against the provision of this act, shall, upon conviction before any justice of the peace of the proper county, be fined in any sum not exceeding ten dollars; and such fine, when collected, shall be paid into the county treasury for the common school fund.

Act, when to take effect.

SEC. 3. This act to take effect and be in force from and after its passage.

*Passed January 13th*, 1854.

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## *AN ACT* FOR THE PRESERVATION OF OYSTERS.

SEC. 1. Oysters not to be gathered in certain months. Proviso.
2. Persons not inhabitants prohibited from gathering oysters for sale.
3. Complainant entitled to one-half the fine.

When not to be gathered.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That it shall not be lawful for any person to take, rake, or gather oysters, in any of the rivers, bays or waters of this territory, during the months of May, June, July, or August, in any year, under penalty not exceeding one thousand dollars for each offence, to be recovered by an action in the District Court; *Provided*, That this section shall not be so construed, as to prevent the taking or gathering of oysters at any season of the year for the purpose of bedding or propagation in any of the waters of this territory.

Proviso.

Persons prohibited from gathering for sale, etc.

SEC. 2. It shall not be lawful for any person who is not at the time an inhabitant and resident of this territory, and who shall not have been, for three months next preceding, an inhabitant and resident, as aforesaid, to take, rake, or gather oysters, for sale or transportation, in any of the rivers, bays, or waters of this territory; and any person offending against the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment in the county jail not exceeding three months, or by a fine not exceeding one hundred and fifty dollars, or by both such imprisonment and fine.

Penalty.

Complainant entitled to half the fine.

SEC. 3. Any person instituting suit or informing against any one offending against the provisions of this act, shall be entitled to one-half of the amount recovered, or the fine imposed; and the other half shall be paid into the county treasury.

*Passed December 22d*, 1853.

## *AN ACT* FOR THE PROTECTION OF SCHOOL LANDS.

SEC. 1. County commissioners to be trustees of school lands
2. Trespassers on school lands, liable in double damages.
3. Moneys collected, where to be deposited, and for what purpose
4. County officers, to inform commissioners of such trespasses
5 This act, when to take effect

County commissioners, trustees of school lands

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the several boards of county commissioners are hereby made trustees of the school lands in their respective counties, and they shall execute the duties of trustees of the school lands, so far as relates to the thirty-sixth and sixteenth sections; or such lands as may be selected in lieu thereof, according to law and their best ability.

Trespassers.

SEC. 2. If any person shall hereafter trespass upon the school lands, the sixteenth or thirty-sixth sections, or any other lands selected in lieu thereof, by cutting down, destroying, or hauling off of such land, any timber, stone, stone-coal, or minerals of any description, every person so offending shall forfeit and pay double the value of the materials so used or destroyed, to be recovered in the official name of the board of county commissioners, before any justice of the peace, or before any court having competent jurisdiction thereof, or by indictment by the grand jury of the District Court of the county in which such offence shall have occurred.

Moneys collected, where to be deposited; for what purpose.

SEC. 3. All moneys collected by this act shall be paid into the county treasury, and be an irreducible fund, the interest of which shall be used for the support of common schools, as other school funds are used for that purpose.

County officers to inform county commissioners of trespass.

SEC. 4. It shall be the duty of all county officers, when any of the offences described in the second section of this act shall come to their knowledge, to immediately give notice to the county commissioners of their county, by stating the fact and the circumstances connected with it; and, on hearing such complaint from an officer or any other person, the county commissioners, or either of them, shall immediately proceed to execute their duties as trustees or trustee of the school lands.

When to take effect.

SEC. 5. This act to take effect and be in force from and after its passage.

*Passed January 16th*, 1854.

## *AN ACT* RELATING TO ELECTION OF JUSTICES OF THE PEACE, AND CONSTABLES, AND TO PROCEEDINGS IN JUSTICES' COURTS.

# CHAPTER I.

## ELECTION OF JUSTICES OF THE PEACE AND CONSTABLES.

TITLE I. *Election of Justices of the Peace.*
TITLE II. *Of Constables.*

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## TITLE I.

### *Election of Justices of the Peace.*

SEC. 1. Justices of the peace, when and where elected.
2. When an additional justice may be elected.
3 Persons eligible.
4. Manner of conducting election, certificate of election.
5. Oath of office, when and how taken; its form, oath to be indorsed on certificate.
6. Bond, when to be entered into by justice; its form.
7 Bond, where to be filed, action thereon, &c.
8 Term of office
9. County commissioners may fill vacancies.
10 Extent of justice's jurisdiction.
11. In case of division of precinct, justice to continue in office.
12 In case of removal, &c, docket, &c, to be delivered to nearest justice in precinct.
13 Penalty for certain persons neglecting to deliver over such papers, &c.
14 Justice to be removed on conviction.
15. Order of removal, how entered up.

Election of justice.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the qualified voters of each election precinct, in the several organized counties of this territory, shall, at the time and place of holding the annual elections, elect one or more justices of the peace.

When additional justice may be elected.

SEC. 2. Each precinct shall be entitled to one justice of the peace; but the board of county commissioners, at the time of organizing such precinct, or at any time afterwards, may, if they deem proper, authorize an additional justice of the peace, to be elected therein.

Who eligible

SEC. 3. No person shall be eligible to the office of justice of the peace, who is not a citizen of the United States, and who has not been a resident of the county, in which he is elected, six months next preceding his election; nor shall any sheriff, coroner or clerk of the District Court, be eligible to or hold such office.

Return, how made.

SEC. 4. The election of justice of the peace shall be conducted, and the return of such election made, in the same manner as other elections; and every person duly elected, shall be entitled to a certificate of election, which may be in the following form:

*Territory of Oregon,* } ss.
*County of* }

Certificate of election.

I do hereby certify that, at an election held on the day of , A. D. 18 , in the precinct of in said county, J. P. was duly elected a justice of the peace.

In testimony whereof, I have hereunto set my hand, with the seal of the board of county commissioners hereunto affixed, this day of , A. D. 18 .

C. D., *Clerk of the Board of County Commissioners.*

SEC. 5. Every person elected a justice of the peace, shall, within twenty days after receiving his certificate of election, take an oath, before any person authorized to administer oaths, in the following form:

Oath, when and how taken.

*Territory of Oregon,* } ss.
*County of* }

I, J. P., do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the laws of this territory: that I will administer justice without respect to persons; and faithfully and impartially discharge, and perform all duties incumbent upon me as a justice of the peace, according to the best of my ability.

Form of oath

J. P.

Subscribed and sworn to before me, this day of ,
A. D. 18 .

C. D., *Clerk of the District Court.*

Which oath shall be indorsed on the back of the certificate of election, and, together with the certificate, filed in the office of the clerk of the District Court for the proper county.

Oath to be indorsed on certificate.

SEC. 6. Every person elected a justice of the peace, shall, at the time of filing his oath of office with the clerk of the District Court, enter into a bond with the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the said clerk of the District Court, in the sum of five hundred dollars, conditioned that he will faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace. Said bond may be in the following form:

Bond of justice.

*Know all men by these presents*, that we, J. P., A. B., and C. D., are held and firmly bound, unto the board of commissioners of the county of , in the territory of Oregon, in the sum of five hundred dollars, for the payment of which we jointly and severally bind ourselves, our heirs, executors and administrators.

Form of bond.

Sealed with our seals, dated this day of ,
A. D. 18 .

Whereas, the said J. P. has been duly elected a justice of the peace in and for the precinct of in the county of , A.D. 18 . Now the condition of the above obligation is such, that if the said J. P. shall faithfully pay over, according to law, all moneys which shall come into his hands by virtue of his office as justice of the peace, then this obligation shall be void, otherwise in full force.

J. P. [L. S.]
A. B. [L. S.]
C. D. [L. S.]

SEC. 7. Such bond shall be filed in the office of the clerk of the District Court, and every person aggrieved by a breach of the condition thereof, may, by an action upon the bond, have judgment against the justice and his sureties, for such sum as he may show himself entitled to, with costs, and interest at the rate of twenty-

Bond to be filed; action thereon

TITLE 1.

five per cent. per annum; and upon any such judgment, stay of execution shall not be allowed.

Term of office.

SEC. 8. Every justice of the peace shall hold his office for the term of two years, and until his successor is elected and qualified; and every justice heretofore elected and qualified, shall continue to act as such until his term of office expires, and until his successor is elected and qualified.

Vacancies, how filled.

SEC. 9. All vacancies existing in the office of justice of the peace, whether happening by death, resignation or otherwise, may be filled by appointment by the board of commissioners of the proper county. Every person so appointed shall hold his office until the next election; and is required to qualify in the same manner as if he had been duly elected to the office of justice of the peace under the provisions of this act.

Extent of jurisdiction.

SEC. 10. The jurisdiction of justices of the peace, elected in pursuance of the provisions of this chapter, shall be co-extensive with the limits of the county in which they are elected or appointed, and no other or greater, whether said county be attached to any other county for judicial purposes or not. But every justice of the peace shall continue to reside in the precinct for which he was elected or appointed, during his continuance in office.

Ib. In case of division of precinct.

SEC. 11. When a precinct shall be divided, and any justice of the peace, of the original precinct, shall fall into the new one, he shall continue to discharge the duties of a justice of the peace until his term of office expires, and his successor is elected and qualified.

In case of removal, etc., docket, etc., to be delivered to nearest justice in precinct.

SEC. 12. If any justice of the peace shall die, resign, or remove out of the precinct for which he may be elected, or his term of office be in any other manner terminated, the docket, books, records and papers appertaining to his office, or relating to any suit, matter, or controversy, committed to him in his official capacity, shall be delivered to the nearest justice in the precinct, who may thereupon proceed to hear, try and determine such matter, suit or controversy, or issue execution thereon, in the same manner as it would have been lawful for the justice before whom such matter or suit was commenced, to have done.

Penalty for neglecting to deliver over such papers, etc.

SEC. 13. Every person, whose duty it is to deliver over the docket, books, records and papers, as prescribed in the last section, shall forfeit and pay, for the use of the county, fifteen dollars for every three months' neglect to perform such duty, which sum may be recovered at the suit of any person.

Removal of justice on conviction.

SEC. 14. Every justice of the peace, who shall, upon indictment in the District Court, be convicted of bribery, perjury, or other infamous crime, or a wilful misdemeanor in office, shall be removed from office.

Order of removal.

SEC. 15. The court, before whom any justice may be tried and convicted of any of the offences mentioned in the preceding section, shall enter up an order removing such justicefrom office; and, from the time such order of removal shall be entered, all the authority of such justice shall cease.

# TITLE II.

## *Of Constables.*

SEC. 16 Number of constables.
17. County commissioners to fill vacancies
18 Election, how conducted; return, how made; certificate, how issued.
19. Oath of office, when to be taken and how filed.
20. Official bond, when entered into and where filed.
21. Duty of constables

SEC. 16. At each general election, there shall be elected by the qualified electors of each precinct, in the several organized counties of this territory, as many constables as there are justices of the peace elected, or authorized to be elected, in such precinct. Number of constables

SEC. 17. All vacancies existing in the office of constable, whether happening by death, resignation, or failure to elect, or otherwise, may be filled by appointment by the board of commissioners of the proper county; and every person so appointed shall hold his office until the next election. Vacancies, how filled.

SEC. 18. The election of constables shall be conducted, and the return of such election made, and certificates of election issued in the same, as in elections of justices of the peace. Election, how conducted, etc.

SEC. 19. Every person elected or appointed a constable shall, within twenty days after receiving his certificate of election, take an oath, before any person authorized to administer oaths, that he will support the constitution of the United States, and the laws of this territory, and faithfully discharge and perform the duties of his office as constable, according to the best of his ability. Such oath shall be indorsed on the back of the certificate of election or appointment, and filed, together with the certificate, in the office of the clerk of the District Court of the proper county. Oath of office. Ib. Where filed.

SEC. 20. Every person elected or appointed to the office of constable shall, within the time prescribed for filing his oath of office, enter into a bond to the board of commissioners of the proper county, with two or more sureties, residents of the county, to be approved by the clerk of the District Court, in the sum of one thousand dollars, conditioned that he will execute all process to him directed and delivered, and pay over all moneys received by him by virtue of his office, and in every respect discharge all the duties of constable, according to law. The clerk shall indorse thereon his approval of the sureties therein named, and shall file the same in his office. Official bond, where filed.

SEC. 21. Any constable may, within his county, serve any writ, process, or order, lawfully directed to him by any justice of the peace, judge of probate, or coroner, and generally do and perform all acts by law required of constables. Duty of constables.

# CHAPTER II.

## COURTS OF JUSTICES OF THE PEACE.

Title I. *Of Jurisdiction of Justice of the Peace.*
Title II. *Of Commencement of Actions: Service and Return of Process.*
Title III. *Of Pleadings and Adjournment.*
Title IV. *Of Witnesses and Depositions.*
Title V. *Of Title to Lands.*
Title VI. *Of Trial by Jury.*
Title VII. *Of Judgment.*
Title VIII. *Of Stay of Execution and Filing Transcript.*
Title IX. *Of Setting off Judgments.*
Title X. *Of Executions, and Proceedings thereon.*
Title XI. *Of Reprieve.*
Title XII. *Of Attachment.*
Title XIII. *Of Forcible Entry and Detainer.*
Title XIV. *Action to Recover Possession of a Mining Claim.*
Title XV. *Of Proceedings for Contempt, before Justice of the Peace.*
Title XVI. *Certiorari, and Proceedings thereon.*
Title XVII. *Of Appeals to the District Court.*
Title XVIII. *Of Qualification of Sureties.*
Title XIX. *Of Criminal Proceedings before Justice of the Peace.*
Title XX. *Miscellaneous Provisions in Criminal Cases.*

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## TITLE I.

### *Jurisdiction of the Justice of the Peace.*

Sec. 1. Jurisdiction to be co-extensive with limits of county.
2. Justice, where to keep office.
3. Justice not to hold his office with practicing attorney.
4 & 5. Powers and jurisdiction of justice.
6. Jurisdiction not to extend to civil action in certain cases.

Jurisdiction. Section 1. The jurisdiction of all justices of the peace shall be co-extensive with the limits of the county in which they are elected, and no other or greater, unless otherwise expressly provided by statute.

Where to keep office. Sec. 2. Every justice of the peace shall keep his office in the precinct for which he may be elected, and not elsewhere; but he may issue process in any place in the county.

Ib. Not in same room with attorney. Sec. 3. No justice of the peace shall hold his office in the same room with a practicing attorney, unless such attorney shall be his law partner: and, in that case, such partner shall not be permitted to appear or practice as an attorney, in any case tried before such justice of the peace.

Justices to hold court. Sec. 4. Every justice of the peace, elected in any precinct in this territory, is hereby authorized to hold a court for the trial of all actions in the next section enumerated, and to hear, try, and determine the same according to law; and for that purpose, where no special provision is otherwise made by law, such court shall be vested with all the necessary powers which are possessed by courts of record in this territory; and all laws of a general nature shall apply to such justice's court, as far as the same may be applicable, and not inconsistent with the provisions of this chapter.

General powers. 10 Wen. 213, 2 Barb 320

SEC. 5. Every justice of the peace shall have jurisdiction over, and cognizance of, the following actions and proceedings:

Justices to have jurisdiction over certain cases.

1. Of an action arising on contract, for the recovery of money only, if the sum claimed do not exceed one hundred dollars;
2. Of an action for damages for an injury to the person, or to the real property, or for taking, detaining, or injuring personal property, if the damages claimed do not exceed one hundred dollars;
3. Of an action for a penalty, not exceeding one hundred dollars;
4. Of an action upon a bond conditioned for the payment of money, not exceeding one hundred dollars; though the penalty exceed that sum, the judgment to be given for the sum actually due. When the payments are to be made by instalments, an action may be brought for each instalment, as it shall become due;
5. Of an action on an undertaking or surety bond taken by him, if the amount claimed do not exceed one hundred dollars;
6. Of an action for the foreclosure of any mortgage, or the enforcement of any lien on personal property, when the debt secured does not exceed one hundred dollars;
7. Of an action for damages for fraud in the sale, purchase, or exchange of personal property, if the damages claimed do not exceed one hundred dollars;
8. Of an action for a forcible, or unlawful entry upon, or forcible or unlawful detention of lands, tenements, or other possessions;
9. Of an action to try the right of occupancy or possession to a mining claim;
10. To take and enter judgment on the confession of a defendant, when the amount does not exceed one hundred dollars.

SEC. 6. The jurisdiction conferred by the last section shall not, however, extend to the civil action:

Limitation of jurisdiction.

1. In which the title to real property shall come in question;
2. Nor to an action for the foreclosure of a mortgage, or the enforcement of a lien on real estate;
3. Nor to an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or upon a promise to marry;
4. Nor to any action against an executor or administrator, as such.

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## TITLE II.

### *Commencement of Action: Service and Return of Process.*

SEC. 7. Justice to keep a docket, what to contain.
8. Actions, how commenced.
9. Justice may require security for costs of plaintiff.
10. Process to be in name of United States
11. Summons to be the first process; what to contain.

TITLE 2.

SEC 12 Summons, how and when to be served.
13 Officer serving process, how to make return.
14 & 15. Justice may issue warrant of arrest.
16 Before issuing warrant, justice shall require undertaking.
17. Warrant, how served; another justice, when to proceed.
18. Notice of arrest to be given to plaintiff.
19. Defendant, how long to be kept in custody on warrant.
20. When an adjournment may be granted to defendant.
21. Justice may empower a citizen to execute process.
22. Liability of officer failing to execute process.
23. Parties may appear in person, or by attorney.
24. Appointment of next friend for infant plaintiffs; his liability for costs.
25. Guardians for infant defendants; when and how appointed.
26. Parties entitled to one hour, after time mentioned, for appearance.

Docket. 4 Comst. 385. Entries therein.

SEC. 7. Every justice of the peace shall keep a docket, in which he shall enter:

1. The titles of all actions commenced before him;

2. The object of the action or proceeding; and, if a sum of money be claimed, the amount of the demand;

3. The date of the summons, and the time of its return; and, if an order to arrest the defendant be made, or a writ of attachment be issued, a statement of these facts;

4. The time when the parties, or either of them appear, or their non-appearance if default be made;

5. A brief statement of the nature of the plaintiff's demand, and the amount claimed; and if any set-off be pleaded, a similar statement of the set-off, and the amount estimated;

6. Every adjournment, stating at whose request, and for what time;

7. The demand of a trial by jury, when the same is made, and by whom made; the order for the jury, and the time appointed for the trial, and return of the jury;

8. The names of the jury, who appear and are sworn; the names of all witnesses sworn; and at whose request;

9. The verdict of the jury, and when received; if the jury disagree, and are discharged, the fact of such disagreement and discharge;

10. The judgment of the court, and the time when rendered;

11. The time of issuing execution, and the name of the officer to whom delivered, and an account of the debt and costs, and the fees due to each person separately;

12. The fact of an appeal having been made and allowed, and the time when;

13. Satisfaction of the judgment, or any money paid thereon, and the time when;

14. And such other entries as may be material.

Actions how commenced.

SEC. 8. Actions may be instituted before a justice of the peace, either by the voluntary appearance and agreement of the parties, or by the usual process.

Security for costs, when required.

SEC. 9. Whenever the plaintiff is a non-resident of the county, the justice may require of him security for the costs, before the commencement of the action; and whenever an action has been commenced by any person, whether a resident of the county or not, the justice may, in his discretion, on the application of the defendant, order the plaintiff to give security for the costs; and if the plaintiff refuse to comply with the order, the justice shall dismiss the action.

Process to be in the name of United States

SEC. 10. All processes issued by justices of the peace shall run in the name of the United States, be dated the day it issued, and shall be signed by the justice granting the same, and shall be directed to the sheriff, or any constable of the proper county.

Summons, first process.

SEC. 11. In all cases not otherwise specially provided for, the first process shall be a summons, directed to the sheriff or constable, and commanding him to summon the defendant to appear before such justice, at a time and place to be named in the summons, not less than six, nor more than twenty days from the date thereof, to answer the complaint of the plaintiff.

Summons, when and how to be served, etc. 10 Wen. 422.

SEC. 12. The summons shall be served at least five days before the time of appearance therein mentioned, by delivering a copy thereof as follows:

1. If the action be against a corporation, to the president or other head of the corporation, secretary, cashier or managing agent thereof;

2. If against a person judicially declared of an unsound mind, or incapable of conducting his own affairs, and for whom a guardian has been appointed, to such guardian, and to the defendant personally;

3. In all other cases to the defendant personally, or if he be not found, to some white person of the family, above the age of fourteen years, at the dwelling-house or usual place of abode of the defendant.

How returned. 17 Wen. 518.

SEC. 13. Every constable or sheriff, serving any process, shall return thereon, in writing, the time and manner of service, and shall sign his name to such return.

Warrant of arrest when issued

SEC. 14. A justice of the peace shall issue a warrant of arrest, as hereinafter prescribed, in the following cases:

1. In an action for the recovery of damages on a cause of action, not arising out of contract, when the defendant is not a resident of the territory, or is about to remove therefrom; or when the action is for a wilful injury to person or to property, the defendant knowing the property to belong to another;

2. In an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the territory, with intent to defraud his creditors;

3. In an action for a fine or penalty, or for money or property embezzled, or fraudulently misapplied, or converted to his own use by a public officer, or officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for misconduct or neglect in a professional employment;

4. In an action to recover the possession of personal property unjustly detained, when the property, or any part thereof, has been concealed, removed, or disposed of, so that it cannot be found, or taken by the sheriff or constable, and with intent that it should not

be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof;

5. When the defendant has been guilty of a fraud in contracting the debt, or incurring the obligation for which the action is brought, or in concealing or disposing of the property, for the taking, detention, or conversion of which the action is brought;

6. When the defendant has removed or disposed of his property, or a part thereof, or is about to do so, with intent to defraud his creditors;

But no female shall be arrested in any action, except for a wilful injury to person or property.

Warrant, when to issue.

SEC. 15. The warrant of arrest shall be issued when it shall appear to the justice, by the affidavit of the plaintiff, or any other person, that a sufficient cause of action exists, supported by the additional affidavit of some disinterested person, and that the case is one of those mentioned in the last section. The affidavit shall be either positive, or upon information and belief; and when upon information and belief, they shall state the facts upon which the information and belief are founded.

Undertaking of plaintiff before issue of warrant.

SEC. 16. Before issuing the warrant of arrest, the justice shall require a written undertaking on the part of the plaintiff, with one or more sureties, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum specified in the undertaking, which shall be at least two hundred dollars.

How served.

When another justice to proceed. 10 Wen. 515, etc.

SEC. 17. The warrant shall be serv[illegible] by arresting the defendant, and taking him before the justice of the peace who issued the same; but, if such justice, at the return thereof, be absent, or unable to try the action, or if it be made to appear to him, by the affidavit of the defendant, that he is a material witness in the action for such defendant, or is near of kin to the plaintiff, stating therein the degree, the officer shall immediately take the defendant to the nearest justice of the same county, who shall take cognizance of the action, and proceed thereon as if the warrant had been issued by himself.

Notice of arrest to the plaintiff

SEC. 18. The officer making the arrest shall immediately give notice thereof to the plaintiff, his agent or attorney, and indorse on the warrant the time of the arrest, and the time of serving notice on the plaintiff.

Custody of defendant in warrant. 10 Wen. 515.

SEC. 19. When a defendant is brought before a justice on a warrant, he shall be detained in the custody of the officer, until he shall be discharged according to law; but in no case shall the defendant be detained longer than twenty-four hours from the time he shall be brought before the justice, unless within that time the trial of the action shall be commenced, or unless it has been delayed at the instance of the defendant.

Adjournment, when granted to defendant.

SEC. 20. If the defendant, on his appearance, demand an adjournment, the same shall be granted, on condition that he execute and file with the justice an undertaking, with two or more sufficient sureties, to be approved by the justice, to the effect that he will render himself amenable to the process of the court during the pendency of the action; and such as may be issued to enforce the judgment therein; or, that the sureties will pay to the plaintiff the amount of any judgment, which he may recover in the action. On filing such undertaking, the justice shall order the defendant to be discharged from custody.

Justice may empower a citizen to execute process.

SEC. 21. Every justice issuing any process authorized by this chapter, upon being satisfied that such process will not be executed, for want of an officer to be had in time to execute the same, may empower any suitable person, not being a party to the action, to execute the same, by an indorsement on the process to the following effect:

"At the request and risk of the plaintiff, (or defendant, as the case may be,) I authorize A. B. to execute and return this writ."

S. F.,
*Justice of the Peace.*

Fees and authority of such person.

And the person so empowered shall thereupon possess all the authority of a constable, in relation to the execution of such process, and shall be subject to the same obligations, and shall receive the same fees for his services.

Officers failing to execute process.

SEC. 22. If any officer, without showing good cause therefor, fail to execute any process to him delivered, and make due return thereof, or make a false return, such officer, for every such offence, shall pay to the party injured ten dollars, and all damage such party may have sustained by reason thereof, to be recovered in a civil action founded upon this statute.

How parties may appear.

SEC. 23. Parties, in justices' courts, may prosecute or defend in person and by attorney, and any person may act as attorney in justices' courts, except that the constable or sheriff, by whom the summons or jury process was served, cannot appear or act on the trial in behalf of either party. The authority of a person to act as attorney for another may be oral or written; but, unless admitted by the adverse party, must be proven by the oath of the attorney, or otherwise.

3 Denio, 85; 5 Hill, 429; 4 Denio, 160

Next friend for infant plaintiff

SEC. 24. No action shall be commenced by an infant plaintiff, except by his guardian, or until a next friend for such infant shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his next friend in such action, and who shall be responsible for the costs therein.

Guardians for infant defendants.

SEC. 25. After the service and return of process against an infant defendant, the action shall not be further prosecuted, until a guardian for such infant shall have been appointed. Upon the request of such defendant, the justice shall appoint some person, who shall consent thereto in writing, to be guardian of the defendant in defence of the action; and if the defendant shall not appear on the return day of the process, or if he neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the

Consent to be filed, etc. guardian or next friend shall be filed with the justice, and such guardian for the defendant shall not be liable for any costs in the action.

Justice to wait one hour. 4 Denio, 160, 182. SEC. 26. The parties shall be entitled to one hour, in which to make their appearance, after the time mentioned in the summons for appearance; but shall not be required to remain longer than that time, unless both parties appear, and the justice, being present, is actually engaged in the trial of another action or proceeding; in such case, he may postpone the time of appearance until the close of such trial.

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## TITLE III.

### *Of Pleadings and Adjournments.*

SEC 27. Pleadings, when to take place.
28. Pleadings in justice's court enumerated and defined.
29. Pleadings, when to be in writing, when oral.
30. Oral pleadings to be entered in docket.
31 Pleadings, how construed in certain cases.
32. Written instrument, how pleaded.
33. Pleadings must be verified.
34. Statements in pleadings, not denied, when to be deemed true.
35. Defective pleadings, how objected to
36. Variance between proof and pleadings, when to be disregarded.
37. Amendments to pleadings, when allowed.
38. To entitle the plaintiff to set-off, he must allege the same in answer.
39. Adjournments, when and how allowed
40. A motion for adjournment, on account of absence of witnesses, must be made on affidavit
41. Terms that may be imposed for granting adjournment.

Pleadings when to take place. SEC. 27. The pleadings in justices' courts shall take place upon the appearance of the parties, unless they shall have been previously filed, or unless the justice shall, for good cause shown, allow a longer time than the time of appearance.

Pleadings enumerated and defined. SEC. 28. The pleadings in justices' courts shall be:

1. The complaint of the plaintiff, which shall state, in a plain and direct manner, the facts constituting the cause of action;

2. The answer of the defendant, which may contain a denial of the complaint or any part thereof, and also a statement, in a plain and direct manner, of any facts constituting a defence;

3. When the answer sets up a set-off, by way of defence, the reply of the plaintiff.

When to be in writing. SEC. 29. The pleadings shall be in writing, when the action is for one of the following causes:

1. For the foreclosure of any mortgage, or the enforcement of any lien on personal property;

2. For a forcible or unlawful entry upon, or a forcible or unlawful detention of lands, tenements, or other possessions;

3. To recover the occupancy or possession of a mining claim. In all other cases, the pleadings may be oral or in writing.

Oral pleadings, how entered. SEC. 30. When the pleadings are oral, the substance of them shall be entered by the justice, in his docket; when in writing, they shall be filed in his office, and a reference made to them in his docket. Pleadings shall not be required to be in any particular form, but shall be such as to enable a person of common understanding to know what is intended.

How construed in certain cases.

SEC. 31. A statement, in an answer or reply, that the party has not sufficient knowledge or information, in respect to a particular allegation in the previous pleading of the adverse party, to form a belief, shall be deemed equivalent to a denial.

Written instrument, how pleaded.

SEC. 32. When the cause of action, or set-off, arises upon an account or instrument for the payment of money only, it shall be sufficient for the party to deliver the account or instrument, or a copy thereof, to the court, and to state that there is due to him thereon, from the adverse party, a specified sum, which he claims to recover or set off. The court may, at the time of pleading, require that the original account or instrument be exhibited to the inspection of the adverse party, with liberty to copy the same; or, if it be not so exhibited, may prohibit its being afterwards given in evidence.

To be exhibited to party.

Verification of pleadings.

SEC. 33. Every complaint, answer or reply, shall be verified by the oath of the party pleading; or if he be not present, by the oath of his attorney or agent, to the effect that he believes it to be true; the verification shall be oral, or in writing, in conformity with the pleading verified.

Pleadings not denied, to be deemed true.

SEC. 34. Every material allegation in a complaint, or relating to a set-off in an answer, not denied by the pleading of the adverse party, shall, on the trial, be taken to be true, except that when a defendant, who has not been served with a copy of the complaint, fails to appear and answer, the plaintiff cannot recover without proving his case.

Defective pleading may be objected to

SEC. 35. Either party may object to a pleading by his adversary, or to any part thereof, that it is not sufficiently explicit to enable him to understand it, or that it contains no cause of action or defence, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended, and if the party refuse to amend, the defective pleading shall be disregarded.

Variance when disregarded. 4 Denio, 419

SEC. 36. A variance between the proof on the trial, and the allegations in a pleading, shall be disregarded as immaterial, unless the court be satisfied that the adverse party has been misled to his prejudice thereby.

Amending pleadings. 1 Denio, 189, 4 do 570; 1 Barb. 552.

SEC. 37. The pleadings may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omissions in the allegations or denials, necessary to support the action or defence, when by such amendment substantial justice will be promoted. If the amendment be made after the issue, and it be made to appear to the satisfaction of the court that an adjournment is necessary to the adverse party, in consequence of such amendment, an adjournment shall be granted. The court may, also, in its discretion, require as a condition of an amendment, the payment of costs to the adverse party.

SEC. 38. To entitle a defendant to any set-off he may have

Defendant must allege set-off in answer.

against the plaintiff, he must allege the same in his answer, and the statute regulating set-offs in the District Court, shall in all respects be applicable to a set-off in a justice's court, if the amount claimed to be set off, be within the jurisdiction of a justice of the peace, and judgment may, in like manner, be rendered by the justice, in favor of the defendant, for the balance found due from the plaintiff.

Adjournments, when and how allowed.

SEC. 39. When the pleadings of the parties shall have taken place, the justice shall, upon the application of either party, if the defendant be not under arrest, and sufficient cause be shown on oath, adjourn the case for any time not exceeding sixty days. If the adjournment be on account of absence of testimony, it shall be for such reasonable time as will enable the party to procure such testimony, and shall be at the cost of the party applying therefor, unless otherwise ordered by the justice.

Ib. For absence of witness, can only be obtained on affidavit.

SEC. 40. An adjournment, on account of the absence of testimony, shall only be allowed upon affidavit, showing the materiality of the testimony expected to be obtained, and that due diligence has been used to procure it. The justice may also require the party applying to state, upon affidavit, the evidence which he expects to obtain, and if the adverse party thereupon admit that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed.

Terms which may be imposed for granting adjournment.

SEC. 41. The party applying for the adjournment, shall also, if required by the adverse party, consent that the testimony of any witness of such adverse party, who is in attendance, be then taken by deposition before the justice, which shall be done accordingly: and the testimony so taken may be read on the trial, with the same effect, and subject to the same objections, as if the witness were produced.

## TITLE IV.

### *Of Witnesses and Depositions.*

SEC. 42. Justice may subpœna witness if within twenty miles.
43. Subpœna how served.
44. Attachment, when to issue against witnesses.
45. Attachment to be directed to sheriff; and how executed.
46. Liability of witnesses not appearing.
47. One party may examine his adversary.
48. Testimony of party may be rebutted.
49. Effect of party's refusing to testify.
50. Testimony by a party not responsive to the inquiries, may be rebutted by the oath of the party calling him.
51. When depositions may be taken.
52. Depositions how taken; service of notice.
53. When depositions may be read in evidence.

Justices may subpœna witnesses within 20 miles.

SEC. 42. A subpœna, issued by a justice of the peace, shall be valid to compel the attendance of a witness, in a justice's court, if such witness be within twenty miles of the place of trial.

Subpœna, how served.

SEC. 43. A subpœna may be served by any white person, above the age of eighteen years, by reading it to the witness, or by delivering to him a copy thereof, if he require it, or by leaving a copy at his usual place of abode.

Attachment, when to issue.

SEC. 44. Whenever it shall appear to the satisfaction of the justice, by proof made before him, that any person duly subpœnæd to appear before him in an action, shall have failed without a just cause to attend as a witness, in conformity to such subpœna, and the party in whose behalf such subpœna was issued, or his agent, shall make oath that the testimony of such witness is material, the justice shall have power to issue an attachment to compel the attendance of such witness: *Provided*, That no attachment shall issue against a witness, unless his fees for mileage and one day's attendance have been tendered or paid in advance, if previously demanded by such witness from the person serving the subpœna.

How executed.

Fees thereon

SEC. 45. Every such attachment may be directed to any sheriff or constable of the county in which the justice resides, and shall be executed in the same manner as a warrant; and the fees of the officers, for issuing and serving the same, shall be paid by the person against whom the same was issued, unless he show reasonable cause, to the satisfaction of the justice, for his omission to attend, in which case, the party requiring such attachment shall pay all such costs.

Liability for damages; 11 Wen 637.

SEC. 46. Every person subpœnæd as aforesaid, and neglecting to appear, shall also be liable to the party in whose behalf he may have been subpœnæd, for all damages which such party may have sustained by reason of his non-appearance: *Provided*, That such witness had the fees allowed for mileage and one day's attendance, paid or tendered to him in advance.

Party may examine adversary 8 Sanf. 718, 8 Coms. 489.

SEC. 47. A party to an action may be examined as a witness at the instance of the adverse party, and for that purpose may be compelled in the same manner, and subject to the same rules of examination as any other witness, to testify at the trial, or appear and have his deposition taken.

Testimony of party may be rebutted.

SEC. 48. The examination of a party, thus taken, may be rebutted by adverse testimony.

Effect of refusal.

SEC. 49. If a party refuse to attend and testify at the trial, or give his deposition before trial when required, his complaint, answer, or reply may be stricken out, and judgment taken against him.

Testimony by a party not responsive to the inquiries, may be rebutted by the oath of the party calling him. 2 Sanf. 399

SEC. 50. A party, examined by an adverse party, may be examined on his own behalf, in respect to any matter pertinent to the issue. But if he testify to any new matter, not responsive to the inquiries put to him by the adverse party, or necessary to qualify or explain his answer thereto, or to discharge, when his answer would charge himself, such adverse party may offer himself as a witness, and he shall be so received.

When depositions may be taken.

SEC. 51. Either party, in an action depending before a justice of the peace, may cause the deposition of a witness therein to be taken, when such witness resides, or is about to go more than twenty miles from the place of trial, or is so sick, infirm, or aged, as to make it probable that he will not be able to attend at the trial.

How taken.

SEC. 52. The notice shall be served, and the deposition taken, certified and returned, according to the law regulating the taking of depositions, to be read in the District Court.

When may be read.

SEC. 53. The justice shall allow every deposition taken, certified, and returned according to law, to be read on the trial of the cause in which it is taken, in all cases where the same testimony, if given verbally before him, could have been received; but no such deposition shall be read on the trial, unless it appears to the justice that the witness whose deposition is so offered:

1. Is dead, or resides more than twenty miles from the place of trial; or

2. Is unable, or cannot safely attend before the justice, on account of sickness, age, or other bodily infirmity; or

3. That he has gone more than twenty miles from the place of trial, without the consent or collusion of the party offering the deposition.

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## TITLE V.

### *Title to Lands.*

SEC. 54. Proceedings of justice when title of land comes in question.

Proceedings when title of land comes in question.

SEC. 54. If it appear on the trial of any cause before a justice of the peace, from the evidence of either party, that the title to lands is in question, which title shall be disputed by the other party, the justice shall immediately make an entry thereof, in his docket, and cease all further proceedings in the cause, and shall certify, and return to the District Court of the county, a transcript of all the entries made in his docket, relating to the case, together with all the process, and other papers relating to the action, in the same manner, and within the same time as upon an appeal; and thereupon the District Court shall proceed in the cause to final judgment and execution, in the same manner as if the said action had been originally commenced therein, and the costs shall abide the event of the suit.

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## TITLE VI.

### *Trial by Jury.*

SEC. 55 When either party may demand trial by jury.
56. Number of jurors.
57 Venire to be issued, to whom directed, its contents.
58 Venire, how to be executed.
59. Challenge to jurors, how taken.
60 Challenge for cause; on what ground; challenge, how tried.
61. Justice to administer oath, &c., to jury; its form.
62. Jury to sit together, proof, &c., how delivered
63. Verdict, when to be returned; how entered, &c
64. Jury to be discharged if they cannot agree; new venire, when.
65. Penalty, if juror do not appear.

When jury may be demanded.

SEC. 55. Before the justice shall commence an investigation of the merits of the cause, by an examination of the witnesses, or the hearing of any other testimony, either of the parties may demand of the justice, that the cause be tried by a jury.

Number of jurors.

SEC. 56. The jury shall consist of six persons, unless the parties agree upon any number of jurors less than six to try the cause, in which case the jury shall consist of such number, not exceeding six, as the parties may agree upon.

Venire, its contents.

SEC. 57. The justice shall issue a venire, directed to the sheriff, or any constable of the county where the cause is to be tried, commanding him to summon six (or such number as the parties may have agreed upon) good and lawful men of the county, qualified to serve as jurors in the District Court of the same county, who shall be nowise of kin to either party, nor interested in the action, to appear before said justice, at a time and place to be named therein, to make a jury for the trial of the cause, between the parties therein named.

How to be executed.

SEC. 58. The sheriff or constable shall execute such venire fairly and impartially, and shall not summon any person whom he has reason to believe is biassed, or prejudiced for or against either of the parties; he shall summon the jurors personally, and shall make a list of the persons, which he shall certify, and annex to the venire, and return to the justice. If a sufficient number of competent jurors cannot be obtained from the panel returned, the sheriff or constable shall immediately summon others to serve in their place.

Challenge to jurors.

SEC. 59. Either party may challenge the jurors; but when there are several parties on either side, they shall join in a challenge, before it can be made. The challenges shall be to individual jurors, and shall be peremptory, or for cause. Each party shall be entitled to two peremptory challenges.

Ib For cause

SEC. 60. Challenges for cause may be taken on any ground that would be a good cause of challenge on the trial of an action in the District Court. Challenges for cause shall be tried by the justice.

Jurors' oath.

SEC. 61. When the jury is selected, the justice shall administer to them the following oath or affirmation:

"You, and each of you, do solemnly swear (or affirm) that you will well and truly try the matter of difference between A. B., plaintiff, and C. D., defendant, and a true verdict give, according to law and the evidence given to you in court, so help you God."

Hearing of proof, etc.

SEC. 62. After the jury are sworn, they shall sit together, and hear the allegations and proofs of the parties, which shall be delivered publicly in their presence.

Return of verdict, etc.

SEC. 63. When the jury have agreed on their verdict, they shall deliver the same to the justice publicly, who shall enter it on his docket.

Jury, when to be discharged.

New venire

SEC. 64. Whenever a justice shall be satisfied that a jury, sworn in any civil cause before him, having been out a reasonable time, cannot agree on their verdict, he may discharge them, and issue a new venire, unless the parties consent that the justice may render judgment on the evidence before him, or upon such other evidence as they may produce.

Penalty, if juror do not appear.

SEC. 65. Every person who shall be duly summoned as a juror, and shall not appear, nor render a reasonable excuse for his default, shall be subject to a fine not exceeding ten dollars.

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TITLE 7.

## TITLE VII.

### *Of Judgment.*

SEC 66. When action may be dismissed without prejudice.
67. When defendant may be non-suited.
68. When justice may proceed without jury.
69 Judgment, when to be rendered.
70 Defendant may serve offer to compromise, and proceedings thereon.
71. Proceedings when prevailing party is entitled to costs.

When action may be dismissed without prejudice.

SEC. 66. Judgment that the action be dismissed without prejudice to a new action, may be entered, with costs, in the following cases:

1. When the plaintiff voluntarily dismisses the action before it is finally submitted;

2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter;

3. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection be taken and overruled, it shall be cause only of reversal or appeal; if not taken at the trial, it shall be deemed waived, and shall not be cause of reversal.

Defendant non-suited.

SEC. 67. When the defendant fails to appear and answer at the time specified in the summons, or within one hour thereafter, judgment shall be given as follows:

1. When the defendant has been served with a copy of the complaint, judgment shall be given, without further evidence, for the sum specified in the summons;

2. In other cases, the justice shall hear the evidence of the plaintiff, and render judgment for such sum only as shall appear by the evidence to be just; but in no case exceeding the amount specified in the summons.

When justice may proceed without jury.

SEC. 68. Upon issue joined, if a jury trial be not demanded, the justice shall hear the evidence, and decide all questions of law and fact, and render judgment accordingly.

Judgment, when to be rendered. 19 Wen. 872, 6 Hill, 89, 3 Denio, 71; 8 Barb. 594.

SEC. 69. Upon the verdict of a jury, the justice shall immediately render judgment thereon. When the trial is by the justice, judgment shall be immediately entered after the close of the trial, if the defendant has been arrested, and is still in custody; in other cases, it shall be entered within three days after the close of the trial.

Defendant may serve offer to compromise, proceedings thereon.

SEC. 70. If the defendant, at any time before the trial, offer, in writing, to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued; but, if he do not accept such offer before the trial, and fail to recover in the action a sum greater than the offer, such plaintiff shall not recover any costs that may accrue after he shall have been notified of the offer of the defendant, but such costs shall be adjudged against him, and, if he recover, deducted from his recovery. But the offer and failure to accept it shall not be given in evidence to affect the recovery otherwise than as to costs, as above provided.

Proceedings when prevailing party

SEC. 71. When the prevailing party is entitled to costs, by this chapter, the justice shall add their amount to the judgment; or, in case of a failure of the plaintiff to recover, or in case of a dismissal of the action, he shall enter up judgment in favor of the defendant, for the amount of such costs. entitled to costs.

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## TITLE VIII.

### *Stay of Execution and Filing Transcripts.*

SEC. 72. When and how long execution on judgment by justice may be stayed.
73 Undertaking in such case necessary.
74. Requisites, and form of undertaking.
75. On expiration of stay, judgment to issue; and against principal and bail
76. Bail, entitled to judgment against principal on motion
77. Judgment, after execution, stayed as on appeal.
78 Filing transcript of judgment
79. Transcript, when filed, a lien on real estate.

SEC. 72. The execution upon a judgment, by a justice of the peace, may be stayed in the manner hereinafter provided, upon reasonable notice to the opposite party; and for the following periods of time, to be calculated from the date of the judgments: Stay of execution.

1. If the judgment be for any sum not exceeding twenty-five dollars, exclusive of costs, one month;

2. If it be for more than twenty-five dollars, two months.

SEC. 73. To entitle any person to such stay of execution, some responsible person, to be approved by the justice, and not being a party to the judgment, must, within five days after the rendering of the judgment, enter into an undertaking before the justice, to the adverse party, in a sum sufficient to secure the payment of the judgment and costs, conditioned to be void upon such payment, at the expiration of the stay. Undertaking in such case.

SEC 74. Such undertaking shall be signed by the person entering into the same, and may be in the following form: Form of undertaking, etc.

Whereas, A. B. has obtained a judgment before J. P., one of the justices of the peace in and for            county, on the      day of          , 18  , against C. D, for            dollars: Now, therefore, I, E. F., acknowledge myself bound to A. B. in the sum of            dollars; this undertaking to be void, if such judgment shall be paid at the expiration of            month, after the time it was rendered.

Dated the        day of           , 18  .                    E. F.

SEC. 75. If, at the expiration of such stay, the judgment be not paid, the execution shall issue against both the principal and bail; if the principal do not satisfy the execution, and the officer cannot find sufficient property belonging to him upon which to levy, he shall levy upon the property of the bail, and, in his return, shall state what amount of money, collected by him on the execution, was collected from the bail, and the time when the same was received. On expiration of stay, judgment to issue.

SEC. 76. After the return of such execution, the bail shall be entitled, on application to the justice, to have the judgment, or so much thereof as may have been collected from him in satisfaction of the execution, transferred to his use; and he may collect the Bail, when and how indemnified.

same from the defendant, by execution, together with interest, at the rate of twelve per cent. per annum.

Judgment after execution stayed as on appeal.

SEC. 77. If a judgment be stayed, in the manner above provided, after an execution has been issued thereon, the justice shall revoke such execution, in the same manner, and with the like effect, as he is hereinafter directed to revoke an execution after an appeal has been allowed; and, if the defendant have been committed, shall order him to be discharged from custody.

Filing transcript of judgment.

SEC. 78. Every justice, on demand of any person in whose favor he shall have rendered judgment for more than ten dollars, exclusive of costs, shall give to such person a certified transcript of such judgment; and the clerk of the District Court of the county in which the judgment was rendered shall, upon the production of any such transcript, file the same in his office, and forthwith enter such judgment in the docket of the judgments of the District Court, and shall note therein the time of filing such transcript.

Transcript, when a lien on real estate.

SEC. 79. Every such judgment, from the time of filing the transcript thereof, shall have the same lien on the real estate of the defendant in the county, as a judgment of the District Court of the same county; shall be equally under control of the District Court, and shall be carried into execution in the same manner, and with like effect, as the judgments of such District Court; but no execution shall be issued thereon out of the District Court, until an execution shall have been issued by a justice, and returned that the defendant has no goods or chattels whereon to levy the same.

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## TITLE IX.

### *Setting off Judgment.*

SEC. 80. When judgments of justices' court may be set off against similar judgments.
81. Transcript of judgment, when to be produced.
82. Proceeding by justice after allowance or disallowance.

When judgments may be set off.

SEC. 80. If there be mutual justices' judgments between the same parties, upon which the time for appealing has elapsed on judgment, on the application of either party, and reasonable notice given to the adverse party, may be set off against the other, by the justice before whom the judgment against which the set-off is proposed may be.

Ib. Transcript of, when to be produced.

SEC. 81. If the judgment, proposed as a set-off, was rendered before another justice, the party proposing such set-off shall produce, before the justice, a transcript of such judgment, upon which there is a certificate of the justice, before whom such may be, that it is unsatisfied in whole or in part, and that there is no appeal, and that such transcript was obtained for the purpose of being set off against the judgment to which it is offered as a set-off. The justice granting such transcript, shall make an entry thereof in his docket, and all further proceedings on such judgment shall be stayed unless such transcript be returned, with the proper justice's certificate thereon, that it has not been allowed in set-off.

SEC. 82. If any justice shall set off one judgment against another, he shall make an entry thereof, in his docket, and execution shall issue only for the balance which may be due after such set-off. If a justice shall allow a transcript of a judgment, rendered by another justice, to be set off, he shall file such transcript among the papers relating to the judgment in which it is allowed in set-off; if he shall refuse such transcript as a set-off, he shall so certify on the transcript, and return the same to the party who offered it.

Proceedings after allowance, or disallowance of such set-off.

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## TITLE X.

### *Of Executions and Proceedings thereon.*

SEC. 83. Execution, when and how issued.
84. Execution, when to be issued by succeeding justice
85. Execution, how issued on transcript of justice in other counties.
86. Execution, to whom directed, when returnable
87. Duty of justice before issuing execution.
88. Execution, how renewed.
89. Notice of sale, how to be given, and what to contain.
90. Sale of goods and return of execution.
91. Officer making sale, not to purchase any property.
92. When warrant may issue, after return unsatisfied.
93. Garnishees may be summoned when no property found.
94. When execution may issue against plaintiff, after return unsatisfied against defendant
95 Jury, when summoned to try the right of property.
96. Claimant may withdraw claim before jury retire, consequence of withdrawal.
97. Claimant may pursue any other legal remedy not specified in this chapter.

SEC. 83. Execution for the enforcement of a judgment in a justice's court, may be issued on the application of the party entitled thereto, in the manner hereinafter prescribed; but after the lapse of five years from the date of the judgment, no execution shall issue, except by leave of the justice before whom such judgment may be, upon reasonable notice to the defendant.

Execution, when and how issued.

SEC. 84. When any judgment shall have been rendered by any justice of the peace, and the same shall not be satisfied during his continuance in office, and the docket of such justice shall have been transferred to another justice, or to the successor of the justice rendering such judgment, the justice to whom the docket shall be delivered shall issue execution upon such unsatisfied judgment, in the same manner, and with like effect, as if he himself had rendered the judgment.

Ib. By succeeding justice.

SEC. 85. If the defendant have not goods and chattels in the county in which judgment was rendered, sufficient to satisfy the execution, the justice before whom such judgment may be, shall, at the request of the party entitled, make out a certified transcript of the same, which may be delivered to a justice in any other county, who shall make an entry thereof in his docket, and issue execution thereon for the amount of the judgment, or such part as shall be unsatisfied, with costs, as in other cases.

Execution on transcript in other counties.

SEC. 86. The execution shall be directed (except when it is otherwise specially provided) to the sheriff or any constable of the county where the justice resides; shall be dated on the day it is issued, and made returnable within thirty days from the date; and shall be against the goods and chattels of the person against whom the same is issued.

Execution to whom directed; when returnable.

* * *

Duty of justice before issuing.

SEC. 87. Before any execution shall be delivered, the justice shall state in his docket, and also on the back of the execution, the amount of the debt, or damages and costs, and of the fees due to each person separately, and the officer receiving such execution shall indorse thereon the time of the reception of the same.

How renewed. 12 Wen. 146; 2 Hill, 331; 7 Barb. 72.

SEC. 88. If an execution be not satisfied, it may, at the request of the plaintiff, be renewed from time to time by the justice who issued the same, or the justice to whom his docket is transferred, by an indorsement thereon to that effect, signed by him and dated when the same shall be made. If any part of such execution has been satisfied, the indorsement of renewal shall express the sum due on the execution. Every such indorsement shall renew the execution in full force, in all respects, for thirty days and no longer, and an entry of such renewal shall be made in the docket of the justice.

Notice of sale. 2 Cow. 421.

SEC. 89. The officer, after taking goods and chattels into his custody, by virtue of an execution, shall, without delay, give public notice, by at least three advertisements, put up at three public places in the county, of the time and place, when and where, they will be exposed to sale; such notice shall describe the goods and chattels taken, and shall be put up at least ten days before the day of sale.

Sale, return of execution, &c. 7 Wen. 236.

SEC. 90. At the time and place so appointed, if the goods and chattels be present for the inspection of bidders, the officer shall expose them to sale at public vendue to the highest bidder; he shall return the execution, and have the money before the justice at the time of making such return, ready to be paid over to the persons respectively entitled thereto.

Certain officers not to purchase.

SEC. 91. No officer shall, directly or indirectly, purchase any goods or chattels, at any sale made by him upon execution; and every such purchase shall be absolutely void.

When warrant may issue after return unsatisfied.

SEC. 92. If the action be one in which the defendant might have been arrested upon a warrant, an execution against the person of such defendant may be issued, after the return of an execution against his property, unsatisfied in whole or in part. An execution against the person may likewise be issued after such return, where the defendant has been arrested upon a warrant, and not discharged according to law.

When garnishee may be summoned.

SEC. 93. If there be no property found, or if the goods and chattels levied on be not sufficient to satisfy such execution, the officer shall, on demand of the plaintiff, summon, in writing, as garnishees, such persons as may be named to him by the plaintiff, or his agent, to appear before the justice, on the return day of the execution, to answer such interrogatories as may be put to them, touching their liabilities as garnishees; and the like proceedings shall be had thereon before the justice, to final judgment and execution, as in proceedings by attachment.

Execution against plaintiff for costs, etc.

SEC. 94. Any justice of the peace may issue an execution against the plaintiff to collect fees and costs, for which such plaintiff may after return unsatisfied.

be liable, after an execution has been first issued against the defendant, and returned "no property found."

Jury, when summoned to try right of property.

SEC. 95. If any property levied on be claimed by any person other than the defendant in the execution, the sheriff or constable shall summon from his county six persons, qualified as jurors between the parties, to try the validity of the claim; such officer shall also give reasonable notice of the claim, and of the time of trial to the plaintiff, who may appear and contest the claim before the jury. The jury, and the witnesses of the parties, shall be sworn by the officer, and if their verdict be in favor of the claimant, the officer may relinquish the levy, unless the plaintiff give him a sufficient indemnity for proceeding thereon. The fees of the jury, the sheriff, or constable, and the witnesses, shall be the same as for similar services in a justice's court, and shall be paid by the claimant if the verdict be against him; otherwise, by the plaintiff. On the trial, the defendant and the claimant may be examined as witnesses by the plaintiff.

Fees.

Withdrawal of claim.

SEC. 96. If, at any time before the jury retire, the claimant withdraws his claim, the trial shall proceed no further, and the claimant shall pay the costs of such unfinished trial.

Claimant may pursue any other legal remedy.

SEC. 97. Nothing contained in the last two sections shall be so construed as to prevent the claimant of property, levied on by execution, from resorting to any legal remedy he may choose to pursue, instead of proceeding in the manner therein prescribed.

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## TITLE XI.

### *Of Replevin.*

SEC. 98. When plaintiff may claim delivery of property.
99. Affidavit to be made by plaintiff; its contents.
100. Justice to indorse affidavit of plaintiff to sheriff, &c.
101. Upon receipt of affidavit of plaintiff, sheriff, &c.
102. Exception to sureties, and proceedings thereon, or on failure to except
103. Defendant, when entitled to redelivery.
104. Justification of defendant's sureties.
105. Property, how taken, if concealed in building or enclosure.
106 Property replevined, how kept.
107. Claim of property by third person, and proceedings thereon.
108. Return of order and affidavit.

When claim for delivery may be made

SEC. 98. The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

Affidavit of plaintiff.

SEC. 99. When a delivery is claimed, an affidavit shall be made by the plaintiff or by some person in his behalf, showing:

1. That the plaintiff is the owner of the property claimed, (particularly describing it,) or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth;
2. That the property is wrongfully detained by the defendant;
3. The alleged cause of the detention thereof, according to his best knowledge, information and belief;

4. That the same has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution, or attachment against the property of the plaintiff, or if so seized, that it is by statute exempt from such seizure; and

5. The actual value of the property.

Justice to indorse affidavit to sheriff.

SEC. 100. The justice shall thereupon, by an indorsement in writing upon the affidavit, order the sheriff, or any constable of the county, to take the same from the defendant and deliver it to the plaintiff, upon receiving a proper undertaking.

Officer when to replevin.

SEC. 101. Upon the receipt of the affidavit and order, with a written undertaking, executed by two or more sufficient sureties, approved by the sheriff or constable, to the effect that they are bound in double the value of the property as stated in the affidavit, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff or constable shall forthwith take the property described in the affidavit, if it be in the possession of the defendant, or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, order and undertaking, by delivering the same to him personally, if he can be found within the county, or to his agent from whose possession the property is taken; or if neither can be found in the county, by leaving them at the usual place of abode of either, within the county, with some person of suitable age and discretion; or if neither have any known place of abode in the county, by putting them into the post office, directed to the defendant, at the post office nearest to him.

Exception to sureties and proceedings thereon, or on failure to except.

SEC. 102. The defendant may, within two days after the service of a copy of the affidavit, order and undertaking, give notice to the officer, that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant excepts, the sureties shall justify upon one day's notice before the justice; and the officer shall be responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they justify, or new sureties be substituted and justify. If the defendant except to the sureties, he cannot reclaim the property as provided in the next section.

Defendant when entitled to redelivery.

SEC. 103. At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the officer a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required, within two days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in this chapter.

SEC. 104. The defendant's sureties, upon one day's notice to the plaintiff, or his attorney, shall justify before the justice, and upon such justification, the officer shall deliver the property to the defendant. The officer shall be responsible for the defendant's sureties, until they justify, or until the justification is completed or expressly waived, and may retain the property until that time; but if they, or others in their place fail, to justify at the time appointed, he shall deliver the property to the plaintiff.

Justification of defendant's sureties.

SEC. 105. If the property, or any part thereof be concealed in a building or enclosure, the officer shall publicly demand its delivery, and if it be not delivered, he shall cause the building or enclosure to be broken open, and take the property into his possession.

Property, how taken if concealed in building or enclosure

SEC. 106. When the officer shall have taken property, as in this chapter provided, he shall keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking, and his necessary expenses for keeping the same.

Property, how kept.

SEC. 107. If the property taken be claimed by any other person than the defendant, or his agent, and such person make affidavit of his title thereto, or his right to the possession thereof, stating the ground of such title or right, and serve the same upon the officer, before the delivery of the property to the plaintiff, the sheriff shall not be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, indemnify the officer against such claim, by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property, as specified in the affidavit of the plaintiff, over and above their debts and liabilities, exclusive of property exempt from execution, and freeholders or householders of the county; and no claim to such property by any other person than the defendant or his agent, shall be valid against the officer unless made as aforesaid; and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

Claim of property by third persons.

SEC. 108. The officer shall return the order and affidavit, with his proceedings thereon, to the justice within five days, after taking the property mentioned therein.

Return of order and affidavit.

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# TITLE XII.

## *Of Attachments.*

SEC. 109. When plaintiff may have personal property of defendant attached.
110. When writ of attachment may issue.
111. Security may be required by officer before executing writ.
112. Writ, to whom directed, and what to require.
113. Interests in corporation and other property liable to attachment.
114. Officer how to execute writ.
115. Debtors, &c, of defendant, when liable to plaintiff.
116. When debts, &c, may be collected; perishable property to be sold.
117. When officer may leave property attached with claimant
118. Action on undertaking against principal, a defence that the property did not belong to defendant
119 Sheriff may summon a jury when the property attached is claimed by third persons.
120. Certificate of defendant's interest in corporation, when to be furnished to officer.

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TITLE 12.

SEC. 121. Person refusing to give certificate may be examined on oath.
122. Plaintiff may exhibit interrogatories to garnishee
123 Garnishee to answer interrogatories under oath.
124. Judgment against garnishee not final, till final judgment against defendant.
125. Plaintiff may except to garnishee's answer; amendment to answer.
126. Plaintiff may deny garnishee's answer; trial of issue; when answer deemed true.
127. Judgment against garnishee when answer is not excepted to or denied.
128. How garnishee, before final judgment, may discharge himself.
129. Examination of defendant or claimant.
130. Costs in actions between plaintiff and garnishee.
131. Judgment against defendant, how satisfied.
132. Proceedings when execution is unsatisfied after sale, or balance due defendant
133. Proceedings in case defendant recover judgment.
134. When defendant may move to discharge attachment.
135. When plaintiff may oppose such motion by affidavit.
136. Plaintiff, how and when to give notice of attachment by publication.
137. Form of notice.
138. Last publication, when to be made.
139. If defendant do not appear, execution not to issue, unless bond is given.
140 Certain earnings of defendant exempt from execution.
141. Public officers not liable as garnishees.
142. Writ of attachment, when returned; sheriff, &c, to indorse his proceedings thereon.

When attachment may issue.

SEC. 109. In an action for the recovery of money, the plaintiff, at the time of issuing the summons, or at any time before judgment, may have the personal property of the defendant attached, in the manner hereinafter prescribed, as a security for the satisfaction of such judgment as he may recover.

Ib 18 Wen. 611; 4 Hill, 601.

SEC. 110. A writ of attachment shall be issued by the justice before whom the action is brought, whenever the plaintiff, his agent, or attorney, shall make affidavit that a cause of action exists against such defendant, specifying the amount of such claim, over and above all legal set-offs, and the nature thereof; and that, as the affiant verily believes, the defendant is either:

1. A foreign corporation;
2. That he is not a resident of this territory, or has departed therefrom, with the intent to delay or defraud his creditors, or to avoid the service of a summons;
3. That he has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of his property, or any part thereof, with the intent to delay or defraud his creditors; or
4. That the debt was fraudulently contracted.

Officer may require security.

SEC. 111. A copy of the affidavit, required by the last section, shall be attached to the writ, upon issuing the same. Before executing such writ, the sheriff or constable, to whom it is directed, shall require a written undertaking on the part of the plaintiff, with one or more sureties, in a sum not less than fifty dollars, nor exceeding the amount claimed by the plaintiff, to the effect, that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

Writ to whom directed, and

SEC. 112. The writ shall be directed to the sheriff, or any constable of the county in which such writ shall have been issued, What to require.

and shall require him to attach, and safely keep all the personal property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, as stated in the affidavit, together with costs and expenses.

Interest in corporations and other property liable to attachment.

SEC. 113. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, all debts due such defendant, and all other personal property of such defendant, not exempt from execution, may be attached, and if judgment be recovered against him, be sold or collected to satisfy the judgment or execution.

Execution of writ.

SEC. 114. The sheriff or constable to whom the writ is directed and delivered, shall execute the same without delay, as follows:

1. Personal property, capable of manual delivery to such officer, shall be attached by taking it into his custody;

2. Stock or shares, or interest in stock or shares of any corporation or company, shall be attached by leaving with the president, or other head of the same, or the secretary, cashier, or managing agent thereof, a copy of the writ and affidavit, and a notice that the stock or interest of the defendant is attached, in pursuance of such writ;

3. Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control such credits, or other personal property, a copy of the writ and affidavits, and a notice that the debts owing by him to the defendant, or the credits, and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ.

Liability of debtors, &c., of defendant.

SEC. 115. All persons, having in their possession or under their control any credits, or other personal property, belonging to the defendant, at the time of service upon them of a copy of the writ, affidavit and notice, as provided in the first section, shall, unless such property be delivered up or transferred, or such debts be paid to the sheriff or constable, be liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

Collection of debts; sale, costs, &c., of perishable property.

SEC. 116. Debts and credits attached, may be collected by the sheriff or constable, if the same can be done without suit, and the receipt of such officer shall be a sufficient discharge for the amount paid. Such officer shall sell any perishable property, which may be attached, in the same manner in which property is sold on execution. Money collected, and the proceeds of such sale, shall be retained by the officer to answer any judgment that may be recovered in the action.

When officer may leave property attached with claimant.

SEC. 117. The sheriff or constable may deliver any of the property attached to the defendant, or to any other person claiming it, and in whose possession it was attached, upon his giving a written undertaking therefor, executed by two or more sufficient sureties, in double the value of the property, engaging to redeliver it, or pay the value thereof, to the sheriff or constable to whom execution upon a judgment, obtained by the plaintiff in that action, may be issued.

Action on undertaking when a defence.

SEC. 118. If an action be brought upon such undertaking, against the principal or his sureties, it shall be a defence, that the property for which the undertaking was given, did not, at the execution of the writ of attachment, belong to the defendant, against whom it was issued.

Sheriff may summon jury, when property is claimed by third persons.

SEC. 119. If any personal property attached be claimed by a third person, as his property, the sheriff or constable may summon a jury to try the validity of such claim, and the same proceedings shall be had thereon, with the like effect, as in case of a seizure upon execution.

Certificate of defendant's interest in corporation.

SEC. 120. When the sheriff or constable, with a writ of attachment against the defendant, shall apply to any person mentioned in the second or third subdivisions of section one hundred and fourteen, for the purpose of attaching the personal property mentioned therein, such person shall furnish him with a certificate, designating the number of shares of the defendant in the stock of the corporation or company, with any dividend or incumbrance thereon, or the amount and description of the property or credits held by such corporation, company, or person, for the defendant, or the debt owing to the defendant. Such certificate shall be verified by the oath of the person giving the same, which oath may be administered by the officer having the writ of attachment, or by any other officer authorized to administer oaths.

Person refusing certificate, &c.

SEC. 121. If such person refuse to give the certificate required in the last section, or, if his certificate be unsatisfactory to the plaintiff, he may be required by an order of the justice who issued the writ of attachment, to appear before such justice at the time therein stated, not less than three days thereafter, and be examined on oath concerning the same.

Interrogatories to garnishee.

SEC. 122. At any time after the making of such order, the plaintiff may exhibit written allegations and interrogatories, touching the property, stock, or credits of the defendant, in the possession of, or held by such person or corporation as garnishee, or debts owing by him or it, and such garnishee shall be required to make full, direct, and true answers to the same on oath.

Garnishee to answer.

SEC. 123. On the day when the garnishee shall be required to attend before the justice, he shall exhibit, on oath, his answer to the allegations and interrogatories of the plaintiff, unless, for cause shown, a further time shall be allowed; in default of such answer, the plaintiff may take judgment by default against him, or the justice may punish him as for a contempt.

Judgment against garnishee.

SEC. 124. Such judgment by default may be proceeded on to final judgment, in like manner as in actions against defendants, but no final judgment shall be rendered against the garnishee, until there shall be final judgment against the defendant, and in no case for a greater amount than that sworn to by the plaintiff, with interest and costs.

Excepting to garnishee's answer.

SEC. 125. The plaintiff may except to the answer of the garnishee for insufficiency, and if the same shall be adjudged insufficient, the justice may allow the garnishee to amend his answer, in such time and on such terms as may be just, or the plaintiff may take judgment by default, or move the justice to attach the body of the garnishee, to compel a sufficient answer.

Denial of answer; issue.

SEC 126. The plaintiff may deny the answer of the garnishee, in whole or in part, and the issues shall be tried as ordinary issues between plaintiff and defendant. If the answer be not excepted to or denied, in such time as the justice may deem proper, it shall be taken to be true and sufficient.

Judgment when answer is not excepted to or denied.

SEC. 127. If, by the answer not excepted to or denied, or if, upon trial, it shall appear that the garnishee is possessed of property and effects of the defendant, or is indebted to the defendant, the value of such property or effects, or of the debt, being ascertained, judgment may be rendered against the garnishee, for the proper amount in money; and in such case the justice may make him a reasonable allowance for his trouble in answering, to be paid out of the fund confessed in his hands.

Garnishee may discharge himself.

SEC. 128. Whenever any property, effects, money, or debts, belonging or owing to the defendant, shall be confessed or found by the justice or jury, to be in the possession of the garnishee, he may, at any time before final judgment, discharge himself by delivering the same to the sheriff or constable.

Defendant, &c., may be examined.

SEC. 129. The defendant or claimant may be required to attend before the justice or jury, for the purpose of giving any necessary information respecting the property attached, and may thereupon be examined on oath concerning the same.

Costs of plaintiff and garnishee.

SEC. 130. In all cases of controversy between the plaintiff and garnishee, the parties may be adjudged to pay or recover costs, as in ordinary cases between plaintiff and defendant.

Judgment how satisfied.

SEC. 131. If judgment be recovered by the plaintiff against the defendant in such action, the sheriff or constable shall satisfy the same out of the property attached, if it be sufficient for that purpose:

1. By paying to the plaintiff the proceeds of all sales of perishable property sold by him, or of any debts or credits collected by him, or so much as may be necessary to satisfy the judgment;
2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under the execution so much of the property as may be necessary to satisfy the balance, if enough for that purpose remain in his hands; and in case of the sale of any rights or shares in the stock of a corporation or company, the sheriff or constable shall execute to the purchaser a certificate of the sale, and the purchaser shall thereupon have all the rights and privileges in respect thereto, which were had by the defendant. Notices of the sales shall be given, and the sales conducted as in other cases of sales on execution.

If execution is unsatisfied.

SEC. 132. If, after selling all the property attached by him remaining in his hands, and applying the proceeds to the payment of the judgment and costs, any balance shall remain due, the sheriff shall proceed to collect such balance as upon an execution in other

TITLE 12. cases. Whenever the judgment and all the costs of the proceedings shall have been paid, the sheriff or constable, upon reasonable demand, shall deliver over to the defendant the residue of the attached property, or the proceeds thereof.

Judgment for defendant, &c. SEC. 133. If the defendant recover judgment against the plaintiff in any undertaking received in the action, all the proceeds of sales, and money collected by the sheriff or constable, and all the property attached, remaining in the hands of the sheriff or constable, shall be delivered to the defendant or his agent, and the order of attachment shall be discharged.

Motion to discharge attachment. SEC. 134. The defendant may also, at any time before the time for answering expires, apply on motion to the justice to discharge the attachment, on the ground that the writ was improperly issued.

Counter-motion by plaintiff, &c. SEC. 135. If the motion be made upon affidavit on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit or other evidence, in addition to those on which the writ of attachment was issued. If, upon such application, it shall satisfactorily appear that such writ was improperly issued, it shall be discharged.

Service of notice by publication. SEC. 136. Whenever the defendant shall not be a resident of the territory, or shall have departed therefrom with the intent to delay or defraud his creditors, or to avoid the service of process, and he cannot be summoned, and the property of such defendant shall have been attached, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, by publication, for four weeks successively in a newspaper printed in the county, or if there be none such, then in some newspaper to be designated by the justice, that a writ of attachment has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place, to be mentioned in said notice, not less than forty-five, nor more than ninety days from the date thereof, judgment will be rendered against him, and his property sold to pay the debts.

SEC. 137. The notice may be in the following form:

*Territory of Oregon,* } ss. *In Justice's Court.*
*County of* }

To .

Form of notice You are hereby notified that a writ of attachment has been issued against you, and your property attached to satisfy the demand of , amounting to ; now unless you shall appear before J. P., a justice of the peace in and for said county, at his office, on the day of , 18 , judgment will be rendered against you, and your property sold to pay the debt.

Dated this day of , A. D., 18 .

*Plaintiff.*

Last publication. SEC. 138. The last publication shall be at least two weeks before the expiration of the time at which the defendant is required to appear.

SEC. 139. When the defendant shall be notified, as aforesaid, and shall not appear and answer to the action, the plaintiff may proceed thereon to final judgment, as in actions commenced by summons; but no execution shall be issued on such judgment against the defendant, nor debts attached be paid to the plaintiff, until such plaintiff, or some person in his behalf, shall enter into a written undertaking, with one or more sufficient sureties, to be approved by the justice, in double the amount of the judgment, to the effect that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt and damages adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof as may be found not justly due to him in a review of the case. Proceedings if defendant do not appear.

SEC. 140. The earnings of the defendant for personal services, at any time within sixty days next preceding the judgment against the garnishees, shall not be included in such judgment, nor be liable to attachment, when it shall be made to appear, by the affidavit of the defendant, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor. When certain earnings of defendant exempt.

SEC. 141. No territorial or county treasurer, sheriff, constable, or other public officer, shall be liable to answer, as garnishee, for moneys in his possession, or under his control, as such public officer, belonging to or claimed by any defendant. Officer not liable as garnishee

SEC. 142. When the writ of attachment shall be fully executed or discharged, the sheriff or constable shall return the same, with his proceedings thereon, to the justice before whom the action was brought. Return of writ.

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## TITLE XIII.

### *Forcible Entry and Detainer.*

SEC. 143 No person to make forcible entry into lands, &c.
144 Possession, when and how to be given
145 Complaint of person entitled to possession, what to contain.
146. Summons of justice, to be directed to sheriff, and what to contain.
147. Summons, how to be served.
148. Venire to sheriff; return of venire
149. When justice may direct constable to summon other jurors
150 Plaintiff, when non-suited
151. Proceedings, on adjournment, by justice, when defendant fails to appear.
152. Defendant's answer, what to contain, answer to be filed.
153. Number of jurors, mode of trial, &c.
154. Verdict for plaintiff and subsequent proceedings.
155. Verdict to be in writing; its form.
156. Verdict of not guilty, proceedings for costs, &c., against plaintiff.
157. When justice may grant a new trial
158. Merits of title not to be inquired into
159. Possession for three years, when a plea in bar.
160. When possession of premises may be recovered.
161. Justice may hear and determine without jury, unless when jury demanded.
162. Abatement of action on payment of rent
163 Adjournments granted by justice as in other cases
164. Judgment before justice, no bar to another action.

SEC. 143. No person shall make entry in lands, tenements, or other possessions, but in cases where entry is given by law, and in Entry, how to be made.

such cases he shall not enter with force, but only in a peaceable manner.

Possession, how given. SEC. 144. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, the person entitled to the premises may be restored to the possession thereof in the manner hereinafter provided.

Complaint. SEC. 145. The person entitled to the possession of the premises may make complaint in writing, and on oath, to a justice of the peace of the county in which the premises are situated, setting forth that the person complained of is in possession of the lands or tenements in question, describing them, and that he entered into the same with force, or that he unlawfully holds the same by force, as the case may be, and the time when.

Summons. SEC. 146. Upon receiving such a complaint, the justice shall issue a summons directed to the sheriff, or any constable of the county, commanding him to summon the person or persons, against whom such complaint shall have been made, to appear before the justice on a day in such summons named.

How served. SEC. 147. The summons shall be served by the officer, as in other cases, and at the same time a copy of the complaint shall, in like manner, be served on the defendant; the officer shall, in his return, state the time and manner of such service.

Venire. SEC. 148. The justice shall, at the time of issuing the summons, issue a venire to the sheriff or constable, commanding him to summon six good and lawful men, qualified to serve as jurors, to appear at the time and place appointed, for the trial of the complaint, to be a jury in the case. Such venire shall be returned on or before the day appointed for the trial, and the officer shall indorse thereon the list of jurors summoned.

Vacancy in jury, how filled. SEC. 149. If a sufficient number of jurors do not attend, or attending are set aside, by challenging peremptorily, or for cause, the justice may order the sheriff or constable to complete the number by summoning other jurors.

Plaintiff, when non-suited. SEC. 150. If the plaintiff fail to attend at the time appointed for hearing the complaint, in person, by agent or attorney, and prosecute his action, he shall be non-suited, and the defendant shall recover his costs.

Proceedings when defendant fails to appear. SEC. 151. If the defendant fail to appear at the time appointed for hearing the complaint, the justice may proceed *ex parte*, or adjourn the cause at his discretion, but he shall not adjourn for a longer time than ten days, nor to any other place than that named in the summons for the hearing of the cause.

Defendant to file answer, &c. SEC. 152. If the defendant appear, he shall, before the trial, file his answer in writing, and under oath, in which he shall set forth all matters in excuse, justification, or avoidance of the allegations in the complaint.

Number of jurors, mode of trial. SEC. 153. The jury shall consist of six persons, unless the parties agree on a less number, and when duly impannelled and sworn, the justice shall cause the complaint to be read to them, and then call on the plaintiff to support the same by proof; but the plaintiff shall not be required to make further proof of the forcible entry and detainer, than that he was lawfully possessed of the premises, and that the defendant unlawfully entered, and detains the same.

Verdict for plaintiff.

SEC. 154. If the jury, on the trial, find the defendant guilty, the justice shall record the verdict, and give judgment thereon, with costs, and also issue a writ of restitution, directed to the sheriff or constable, to cause the plaintiff to be repossessed of the premises, to which shall be added a clause commanding the officer to levy the costs off the goods and chattels of the defendant.

Verdict to be in writing.

SEC. 155. The verdict of the jury shall be in writing, and shall be in the form, or to the effect following:

Its form.

"We, the jury, find the defendant guilty (or, if in favor of the defendant, 'not guilty') of said forcible entry and detainer in manner and form as the plaintiff in his complaint hath alleged," or the jury may find the defendant guilty as to part, and not guilty as to the balance of the charge, as laid in the plaintiff's complaint; if so, they shall state it specially in their verdict.

Verdict of "not guilty"

SEC. 156. When the jury find a verdict of "not guilty" generally for the defendant, the verdict shall be so recorded, and the justice shall enter judgment against the plaintiff for costs, and issue execution therefor against his goods and chattels.

New trial.

SEC. 157. In all cases of forcible entry and detainer, the justice shall have power to grant a new trial, if the same be applied for on the day the verdict is rendered, and good cause be shown on affidavit therefor, which shall be within ten days after granting the same; but not more than one new trial shall be granted to either party.

Merits of title not to be mooted.

SEC. 158. The estate or merits of the title shall in nowise be inquired into, on any complaint for a forcible entry and detainer.

Possession for three years, a plea in bar

SEC. 159. Three years' quiet possession of the premises, immediately preceding the filing of the complaint, by the party complained of, or those under whom he holds, may be pleaded by any defendant, in bar of the plaintiff's demand of possession, unless his estate therein be ended.

When possession may be recovered

SEC. 160. The person entitled to any premises, may recover possession thereof in the manner hereinbefore provided in the following cases:

1. When any person shall hold over any lands or tenements, after the time for which they are demised, or let to him, or to the person under whom he holds, or contrary to the conditions or covenants of any lease or agreement under which he holds.

2. When any rent shall have become due, or any such lease or agreement, and the tenant or person in possession shall have neglected or refused, for ten days after demand of the possession, made in writing, to deliver up possession of the premises, or pay the rent so due;

3. When any person shall continue in possession of any prem-

TITLE 14. ises, sold by virtue of any mortgage or execution, after the expiration of the time, limited by law, for the redemption of such premises;

4. When any tenant at will or by sufferance shall hold over after the determination of his estate by a notice to quit, as provided by law.

Justice may proceed without a jury. SEC. 161. When the plaintiff shall file a complaint for an unlawful detainer, for any one of the causes mentioned in the last section, it shall not be necessary for the justice to issue a venire for a jury, at the time of issuing the summons, but the justice shall, at the time of trial, proceed to hear and determine the complaint, unless either party shall call for a trial by jury, in which case the justice shall issue a venire in the same manner, and the same proceedings shall thereupon be had as in cases of forcible entry and detainer.

Action to abate on payment of rent, &c. SEC. 162. When the action shall be brought to recover the possession of premises demised, or let, for the reason that the tenant, or person in possession, has refused or neglected to pay the rent due; it shall be lawful for the defendant, at any time before judgment, to pay to the justice for the plaintiff, the rent then in arrear, with interest, and the costs of the action, and thereupon no writ of restitution shall be awarded.

Adjournment. SEC. 163. The justice shall have the same power to adjourn in actions for forcible entry and detainer as in other cases.

Judgment not final. SEC. 164. Neither the judgment, nor anything contained in this chapter, shall bar or prevent the party injured, from bringing an action to recover the possession of the premises, or to recover damages for the trespass or injury committed, against the aggressor or party offending.

## TITLE XIV.

### *Action to recover Possession of a Mining Claim.*

SEC. 165. Complaint, how made and what to contain.
166. Proceedings upon filing complaint.
167. Custom, &c., of the diggings evidence, when not in conflict with law.

Complaint. SEC. 165. Any person, claiming the right to the occupancy and possession of a mining claim, withheld by another, may make complaint in writing, and on oath, to a justice of the peace of the county in which the mining claim is situated, setting forth the facts constituting his right to such possession and occupancy, and such a description of the mining claim as can conveniently be given, and that the defendant wrongfully withholds the possession from him.

Proceedings on filing complaint. SEC. 166. Upon filing such complaint, the same proceedings shall be had before the justice, as in actions for a forcible entry and detainer, and if judgment be rendered for the plaintiff, a writ of restitution may, in like manner, be issued, to place the plaintiff in possession of such mining claim.

Customs, usages, &c., evidence.

SEC. 167. In an action to recover possession of a mining claim, proof shall be admitted of the customs, usages or regulations, established and in force at the bar or diggings embracing such claim; and such customs, usages, or regulations, when not in conflict with the laws of the United States, or of this territory, shall govern the decision of the action.

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## TITLE XV.

### *Of Proceedings for Contempts before Justices of the Peace.*

SEC 168. When justice may punish for contempt.
169. Contempt, how punished.
170. No person to be punished for contempt without a hearing.
171. Offender, if present, may be arraigned.
172 Warrant for contempt; its form.
173. Conviction to be entered in docket.
174. Warrant of commitment, when to issue.

When justices may punish for contempt.

SEC. 168. In the following cases, and no others, a justice of the peace may punish for contempt:

1. Persons guilty of disorderly, contemptuous and insolent behavior towards such justice, while engaged in the trial of a cause, or in rendering judgment, or in any judicial proceeding, which tends to interrupt such proceedings, or impair the respect due to his authority;
2. Persons guilty of any breach of the peace, noise, or disturbance, tending to interrupt the official proceedings of such justice;
3. Persons guilty of resistance, or disobedience to any lawful order or process made or issued by him.

Contempt, how punished.

SEC. 169. Punishment for contempt may be by fine, not exceeding twenty-five dollars, or by imprisonment in the county jail, not exceeding two days, at the discretion of the justice, unless otherwise provided by the statute.

No person to be punished without a hearing.

SEC. 170. No person shall be punished for a contempt before a justice of the peace, until an opportunity shall have been given to him to be heard in his defence; and for that purpose, the justice may issue his warrant to bring the offender before him.

Arraignment.

SEC. 171. If the offender be present, he may be summarily arraigned by the justice, and proceeded against in the same manner as if a warrant had been previously issued, and the offender arrested thereon.

Form of warrant.

SEC. 172. The warrant for contempt may be in the following form:

*Territory of Oregon,* } *ss:*
*County of* }

To the sheriff or any constable of said county:

In the name of the United States, you are hereby commanded to apprehend A. B., and bring him before J. P., one of the justices of the peace of said county, at his office in said county, to show cause why he should not be convicted of a contempt, alleged to have been committed on the day of , A. D. 18 , before the said justice, while engaged as a justice of the peace in judicial proceedings.

Dated this day of , A. D. 18 .

J. P., *Justice of the Peace.*

Conviction to be entered in docket.

SEC. 173. Upon the conviction of any person for contempt, an entry thereof shall be made in the docket of such justice, stating the particular circumstances of the offence, and the judgment rendered thereon, and may be in the following form:

*Territory of Oregon,* } *ss.*
*County of* }

Form.

Whereas, on the day of , A. D. 18 , while the undersigned, one of the justices of the peace, of the said county, was engaged in the trial of an action, between C. D., plaintiff, and E. F., defendant, in said county, A. B., of the said county, did interrupt the said proceedings, and impair the respect due to the authority of the undersigned, by (here describe the cause particularly;) and whereas the said A. B. was thereupon required by the undersigned to answer for the said contempt, and show cause why he should not be convicted thereof; and whereas, the said A. B. did not show cause against the said charge: Be it therefore remembered, that the said A. B. is adjudged to be guilty, and is convicted of the contempt aforesaid, and is adjudged by the undersigned, to pay a fine of dollars (or be imprisoned, &c.)

Dated this day of , A. D. 18 .

J. P., *Justice of the Peace.*

Warrant of commitment.

SEC. 174. If any person convicted of a contempt be adjudged to be imprisoned, a warrant of commitment shall be issued by the justice; if he be adjudged to pay a fine, process may be issued to collect the same, and when so collected, it shall forthwith be paid by the justice into the county treasury.

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## TITLE XVI.

### *Certiorari, and Proceedings thereon.*

SEC. 175. Removal of cause to District Court by *certiorari*
176. When affidavit for *certiorari* to be filed, and what to contain.
177. Writ to issue upon filing affidavit and undertaking.
178. *Certiorari*, not to stay proceedings, unless undertaking be given.
179. Service of writ, and certificate of undertaking.
180. Copy of affidavit to be served with writ
181. Justice may be compelled to amend return.
182 When cause may be brought on to argument.
183 Judgment of District Court, how given.
184 Restitution, when awarded.

Certiorari.

SEC. 175. If any person shall conceive himself injured by error in any process, proceeding, judgment, or order given by any justice of the peace within this territory, it shall be lawful for such person to remove such process, proceeding, judgment, or order, to the District Court, as hereinafter provided.

Affidavit, when to be filed; what to contain.

SEC. 176. Within twenty days after the rendition of the judgment, or, if the error be committed after judgment, then within twenty days after such error was committed, the party applying for such *certiorari*, his agent or attorney, shall file in the office of the clerk of the District Court, for the proper county, an affidavit, stating that, in his belief, there is reasonable cause for granting such *certiorari*, for error in such judgment or proceeding, (setting forth the ground of error alleged,) and that the application is made (in good faith, and not for the purpose of delay; and further, shall execute a written undertaking to the adverse party, with one or more sureties, to be approved by the clerk, in a sum not exceeding one hundred dollars, to the effect that he will pay all costs that may be adjudged against him in the District Court.

Writ, when to issue

SEC. 177. Upon filing the affidavit and executing the undertaking mentioned in the last section, the clerk shall issue a writ of *certiorari*, directed to the justice committing the alleged error, commanding him to make return as to all the facts contained in such affidavit, and of all the proceedings in the case.

Not to stay proceedings unless undertaking be given.

SEC. 178. The writ of *certiorari* shall not stay the execution of the judgment before the justice, unless the party applying therefor, his agent or attorney, shall, in lieu of the undertaking mentioned in section one hundred and forty-three, execute a written undertaking to the adverse party, with one or more sufficient sureties to be approved by the clerk, in double the amount of the judgment and costs rendered before the justice, to the effect that the party applying will prosecute the writ of *certiorari* to final judgment, and abide the order the court may make therein.

Service of writ, &c.

SEC. 179. The writ of *certiorari* shall be served on the justice within ten days after it has been issued; and if an undertaking be executed in pursuance of the last section, and a certificate of the clerk to that effect be served on the justice, all further proceedings in law in such case shall cease; and if the execution shall have issued on such judgment, the justice shall immediately recall the same.

Copy of affidavit to be served with writ.

SEC. 180. Upon the service of a writ of *certiorari* to reverse a judgment, it shall be the duty of the party serving the same, to deliver at the same time to the justice a copy of the affidavit on which the *certiorari* was procured, and the justice shall make a special return as to all the facts contained in such affidavit and of the proceedings in the case, and annex a copy thereof to the writ, and shall file the same with the clerk of the District Court, within ten days after the service of the writ, together with all the papers in the action; and he shall also certify the time when the writ was served upon him.

Justice may be compelled to amend return.

SEC. 181. The District Court shall have power to compel such justice to make or amend such return by rule, attachment, or mandamus, as the case may require.

Case, when brought on

SEC. 182. When the writ of *certiorari* and return shall be filed with the clerk, the case may be brought on to argument before the District Court, or judge thereof, at any time thereafter, according to the statutes relating thereto.

Judgment, how given. 5 Barb. 283; do. 560; 2 Sanf. 222.

SEC. 183. The District Court or judge shall, after hearing the case, give judgment as the right of the matter may appear, without regarding technical omissions, imperfections, or defects, in the proceedings before the justice, which did not affect the merits, and may affirm or reverse the judgment in whole or in part, and issue execution as upon other judgments rendered before said court.

Restitution, when awarded.

SEC. 184. If a judgment rendered before a justice be collected, and afterwards be reversed by the court above, such court shall award restitution of the amount so collected, with interest from the time of collection, and execution may issue thereon.

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## TITLE XVII.

### *Of Appeals to the District Court.*

SEC. 185. Who may appeal.
186 Appeal, when and how taken.
187. Appeal or stay of proceedings not allowed unless undertaking be given.
188. Writ of restitution not to issue, unless appellant execute undertaking.
189. Justice to stay proceedings after undertaking is filed
190. Justice to give certificate of appeal, stay of proceedings on execution.
191. Appellant, when to furnish District Court with transcript of docket.
192. Issue to be tried without new pleadings
193. Court may compel justice to give transcript, &c.
194 Appeal, when not to be dismissed for defective undertaking.
195. Judgment against appellant, how rendered.

Who may appeal. 2 Hill, 412.

SEC. 185. Any person considering himself aggrieved by any judgment or decision of a justice of the peace, except judgment by confession, may, in person or by his agent, appeal therefrom to the District Court of the same county where the judgment was rendered, or the decision was made.

How taken

SEC. 186. Such appeal shall be taken within twenty days after the judgment is rendered, or the decision made, and shall be by filing a notice of appeal with the justice, and serving a copy thereof on the adverse party, or his attorney.

Undertaking to precede appeal. 6 Barb 173; 1 Comst. 606; 2 do. 569. Ib. Stay of proceedings.

SEC. 187. No appeal shall be allowed in any case, unless a written undertaking shall be executed on the part of the appellant, by one or more sureties, in the sum of one hundred dollars, to the effect that the appellant will pay all costs which may be awarded against him on the appeal; or, if a stay of proceedings before the justice be claimed, an undertaking with two or more sureties, in a sum equal to twice the amount of the judgment, to the effect that the appellant will pay the costs and judgment, provided the judgment appealed from be affirmed; or, if affirmed only in part, then to the extent in which it may be affirmed.

Writ of restitution, when to issue.

SEC. 188. If the judgment appealed from direct the delivery of the possession of premises, in an action of forcible entry and detainer, or of a mining claim, a writ of restitution may be issued and executed, unless a written undertaking be entered into on part of the appellant, with two or more sureties, to the effect that during the possession of such premises, or mining claim, by the appellant, he will not commit, nor suffer to be committed, any waste, destruction, or injury thereon; and that, if the judgment be affirmed, he will pay the value of the use and occupation of the premises, or mining claim, from the time of the appeal until the delivery of possession thereof, and all costs of the appeal. The amount of such undertaking shall be fixed by the justice before whom the action was tried.

Stay of proceedings after filing undertaking.

SEC. 189. Upon an appeal being made, and an undertaking filed to stay all proceedings, the justice shall allow the same, and make an entry of such allowance in his docket; and all further proceedings on the judgment before the justice shall thereupon be suspended; and if, in the mean time, execution shall have been issued, the justice shall give the appellant a certificate that the appeal has been allowed.

Certificate of appeal, stay of execution, &c.

SEC. 190. On such certificate being presented to the officer holding the execution, he shall forthwith release the property of the defendant that may have been taken on execution; and, if the body of the defendant have been taken on execution, he shall be discharged from imprisonment.

Appellant to furnish transcript of docket, &c.

SEC. 191. On or before the first day of the term of the District Court, next after the appeal have been taken, the appellant shall furnish the District Court with a transcript of all the entries made in the justice's docket relating to the case, together with all the process and other papers relating to the action, and filed with the justice, which shall be certified by such justice to be correct; and upon the filing of such transcript, the District Court shall become possessed of the cause, and shall proceed in the same manner, as near as may be, as in actions originally commenced in that court, except as herein otherwise provided.

Issue, how tried.

SEC. 192. The issue before the justice shall be tried in the District Court, without other or new pleadings, unless otherwise directed by the court.

Court may compel justice to give transcript.

SEC. 193. Upon an appeal being made and allowed, the District Court may, by rule and attachment, compel the justice to make and deliver to the appellant a certified transcript of the proceedings, upon paying to such justice the fees allowed by law for making such transcript; and, whenever the court is satisfied that the return of the justice is substantially erroneous or defective, it may, by rule and attachment, compel him to amend the same.

When appeal not to be dismissed.

SEC. 194. No appeal allowed by a justice shall be dismissed on account of the undertaking being defective, if the appellant will, before the motion is determined, execute and file in the District Court, such an undertaking as he should have executed by the allowance of the appeal, and pay all costs that shall be incurred by reason of such defect.

Judgment against appellant.

SEC. 195. In all cases of appeal to the District Court, if, on the trial anew in such court, the judgment be against the appellant in whole or in part, such judgment shall be rendered against him and his sureties in the undertaking for the appeal.

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# TITLE XVIII.

## *Of Qualifications of Sureties.*

SEC. 196. Qualifications of sureties.
197. Bail, how to justify.
198. Allowance, when to be indorsed on undertaking.

Qualifications of sureties.

SEC. 196. The qualifications of sureties, on the several undertakings required by this chapter, shall be as follows:

1. Each of them shall be a resident and householder, or freeholder within the county;

2. Each shall be worth double the amount stated in the undertaking, over and above all his debts and liabilities, exclusive of property exempt from execution.

Bail, how to justify.

SEC. 197. For the purpose of justification, each of the sureties shall attend before the justice at the time mentioned in the notice, and may be examined on oath, on the part of the adverse party, touching his sufficiency, in such manner as the justice in his discretion may think proper. The examination shall be reduced to writing and subscribed by the sureties, if required.

Allowance, when indorsed on undertaking.

SEC. 198. If the justice find the sureties sufficient, he shall annex the examination to the undertaking, indorse his allowance thereon, and file the same, and the officer shall thereupon be exonerated from all liability.

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# TITLE XIX.

## *Of Criminal Proceedings before Justice of the Peace.*

SEC. 199. Jurisdiction of justice.
200. Justice when to issue warrant.
201. Criminal cases to be entered in separate docket, and how.
202. Proceedings on return of warrant.
203. Accused may give bail.
204. Complaint to be read to accused, and he be required to plead.
205. When court to try issue.
206. Proceedings when defendant pleads guilty.
207. When justice to make list of jury; striking of names therefrom.
208. When justice to direct person to strike names from list; issue of venire.
209 Duty of officer to whom venire is directed.
210. Deficiencies in jury, how supplied.
211. New jury, when to be summoned.
212 Either party may challenge for cause.
213. Oath to be administered by justice to jurors.
214. Proceedings of jury after being sworn.
215. Verdict, how delivered.
216. Judgment of justice, &c.
217. Discharge of accused; when judgment for costs against complainant.
218. When person convicted may appeal to District Court.
219. Judgment, how executed.
220. Jurors and witnesses liable for contempt as in civil cases.
221. Justice to make certificate of conviction.
222. Certificate, when and where to be filed.
223. Certificate and certified copy evidence.

Jurisdiction of justice

SEC. 199. Justices of the peace shall have power to hold courts, subject to the provisions hereinafter contained, to hear, try, and determine the charges for offences arising within their respective counties, where such jurisdiction is conferred upon them by any law of this territory.

When to issue warrant.

SEC. 200. Upon complaint made to any justice of the peace by any person, that any such offence has been committed within the county, he shall examine the complainant on oath, and the witnesses produced by him, and shall reduce the complaint to writing, and cause the same to be subscribed by the complainant; and, if it shall appear that such offence has been committed, such justice shall issue his warrant, reciting the substance of the complaint, and requiring the sheriff, or constable, to whom it is directed, forthwith to arrest the accused, and to bring him before such justice, or some other justice of the same county, to be dealt with according to law; and in the same warrant may require the officer to summon such witnesses as shall be named therein to appear and give evidence at the trial.

Criminal cases, how entered.

SEC. 201. Every justice of the peace shall keep a separate docket for criminal cases, in which he shall enter the territory of Oregon as plaintiff, and the accused as defendant, and he shall make all such other entries as are required in civil cases.

Proceedings on return of warrant.

SEC. 202. On the return of warrant with the accused, the said justice shall proceed to hear, try, and determine the cause within one day, unless continued for cause.

Accused may give bail.

SEC. 203. From the time of the return of the warrant until the time of the trial, the accused may give bail, with one or more sureties, to be approved by the justice, for his appearance at the time fixed for the trial; or, in the event of failure so to do, may be committed to jail for safe keeping, by order of said justice, or left in the custody of the arresting officer.

Warrant to be read to accused, &c.

SEC. 204. The charge made against the accused, as stated in the complaint, shall be distinctly read to him, and he shall be required to plead thereto—which plea the justice shall enter in his docket; if the accused refuse to plead, the justice shall enter the fact, with the plea of not guilty, in behalf of such accused.

When court to try issue.

SEC. 205. If the plea of the accused be not guilty, and a trial by jury be expressly waived by him, the justice shall proceed to try such issue, and to determine the same according to the evidence which may be produced against and in behalf of such accused.

If defendant pleads guilty

SEC. 206. If the accused shall plead guilty to such charge, the justice shall thereupon convict him of the offence charged, and render judgment thereon.

When justice to make jury list

SEC. 207. After the joining of issue, and before the justice shall proceed to an investigation of the merits of the cause, unless the accused shall expressly waive his right to a trial by jury, such justice shall make a list in writing of the names of eighteen inhabitants of of the county, qualified to serve as jurors in the courts of record in this territory, from which list the complainant and accused may strike alternately one name, until each shall have stricken out six names.

When justice to direct person to strike out jurors.

SEC. 208. In case the complainant or accused shall neglect to strike out such names, the justice shall direct some suitable disinterested person to do so, for either or both of the parties so neglecting; and, upon such names being struck out, the justice shall issue a venire directed to the sheriff, or any constable of the county, commanding him to summon the six persons, whose names shall remain upon such list, to appear before such justice, at the time and place to be named therein, to make a jury for the trial of such offence.

Venire. SEC. 209. The officer to whom such venire shall be delivered, shall summon such jury personally, and shall make a list of the persons summoned, which he shall certify and annex to the venire, and return the same, with the venire, to the justice, within the time specified.

Deficiencies in jury. SEC. 210. If any of the jurors named in such venire shall fail to attend in pursuance thereof, or if there shall be any legal objection to any that shall appear, the justice shall supply the deficiency by directing the sheriff, or any constable who may be present, and disinterested, to summon any of the bystanders, or others who may be competent, and against whom no cause of challenge shall appear, to act as jurors in the cause.

New jury. SEC. 211. If the officer to whom the venire shall have been delivered, shall fail to return the same, as thereby required, or if the jury shall fail to agree, and shall be discharged by the justice, a new jury shall be selected and summoned in the same manner, and the same proceedings shall be had, as herein prescribed in respect to the first jury, unless the accused shall consent to be tried by the justice, in which case he shall proceed to the trial of the issue as if a trial jury had been waived.

Challenge. SEC. 212. In all trials for criminal offences before a justice of the peace, either party may challenge any juror for cause as in civil cases.

Juror's oath. SEC. 213. The justice shall administer the following oath or affirmation to the jurors:

You, and each of you, do solemnly swear (or affirm) that you will well and truly try this cause between the territory of Oregon and         , the accused, and a true verdict give, according to law and the evidence, unless discharged by the court—So help you God.

Jury, how to proceed. SEC. 214. After the jury shall have been sworn, they shall sit together, and hear the proofs and allegations in the case, which shall be delivered in public, and in the presence of the accused; and, after such proof and allegations, the jury shall be kept together in some convenient place until they agree on their verdict, or are discharged by the justice; and the sheriff, or a constable, shall be sworn to take charge of the jury, in like manner as upon trials in justices' courts in civil proceedings.

Verdict. 21 Wen. 305, 5 Denio, 98 SEC. 215. When the jurors have agreed upon their verdict, they shall deliver the same to the justice publicly, who shall enter it in his docket.

Judgment. SEC. 216. When the accused shall be tried under the provisions of this chapter, and found guilty, either by the justice or jury, or shall be convicted of the charge made against him on a plea of guilty, the justice shall render judgment thereon, and inflict such punishment, either by fine or imprisonment, or both, as the nature of the case may require; but such imprisonment shall in no case exceed the limit fixed by law for the offence charged.

Discharge of accused.

SEC. 217. Whenever the accused, tried under the preceding provisions of this chapter, either by the justice or by a jury, shall be acquitted, he shall be immediately discharged; and if the justice before whom the trial is had, shall certify in his docket that the complaint was wilful and malicious, and without probable cause, he shall enter a judgment against the complainant to pay all the costs which shall have accrued upon the trial; and, unless he enter into an undertaking to this territory, with one or more sureties, to pay such costs in thirty days after the trial, execution shall issue therefor.

Costs against complainant,

Person convicted may appeal.

SEC. 218. Whenever the accused, tried under the preceding provisions of this chapter, either by the court or the jury, shall be convicted, he may appeal from the judgment of the justice to the District Court of the county: *Provided*, The person so convicted shall, within ten days after the judgment, enter into an undertaking, with one or more sufficient sureties, conditioned to appear before said court, and abide the judgment of the court therein; and the justice from whose judgment an appeal is taken, shall make a return of the proceedings had before him, and shall cause the warrant and return, together with any undertakings, to be filed with the clerk of the District Court, on or before the first day of the term of the District Court next after the appeal is taken; and the complainant and witnesses may also be required to enter into undertakings, with or without sureties, in the discretion of the justice, to appear at said District Court at the time last aforesaid, and abide the order of the court therein.

Proviso.

Judgment, how executed, &c.

SEC. 219. If the accused be convicted, and sentenced to be imprisoned, the judgment shall be executed by virtue of a warrant of commitment, under the hand of the justice, specifying the particulars of such judgment, and directed to the sheriff or any constable of the county in which the conviction shall be had. If such accused be convicted and adjudged to pay a fine and costs, the justice shall issue an execution to collect the same, which shall be returnable as executions in civil cases.

Penalty on jurors and witnesses for default, &c.

SEC. 220. In case any person summoned to appear before any court, held by a justice of the peace pursuant to the provisions of this chapter, as a juror or witness, shall fail to appear, or if any witness appearing, shall refuse to testify, he shall be liable to the same penalties, and may be proceeded against in the same manner as provided by law in respect to jurors and witnesses in justices' courts in civil proceedings.

Certificate of conviction.

SEC. 221. Whenever any conviction shall be had before a court held by a justice of the peace, the justice by whom such court shall have been held, shall make a certificate of such conviction under his hand, in which it shall be sufficient briefly to state the offence charged, and the conviction and judgment thereon; and, if any fine has been collected, the amount thereof.

Ib. To be filed.

SEC. 222. Within twenty days after such conviction, the said

TITLE 20. justice shall cause such certificate to be filed in the office of the clerk of the District Court of the county in which the conviction shall have been had.

Ib. To be evidence. SEC. 223. Every certificate of conviction made and filed under the foregoing provisions, or a duly certified copy thereof, shall be evidence, in all courts and places, of the facts therein contained.

## TITLE XX.

### *Miscellaneous Provisions in Criminal Cases.*

SEC 224. Assault, battery or affray; how punishable.
225. When indictable.
226. Justice not having jurisdiction; how to proceed.
227. Powers of justice for preserving public peace
228. Breach of recognizance to be certified to District Court.
229. Fines to be paid county treasurer.
230. Penalty for neglecting to pay over money collected for fines.
231. County, when to pay costs.
232. Justice may require complainant to pay costs.

Assault, &c., how punished. SEC. 224. No assault, battery, or affray, shall be indictable, but all such offences shall be prosecuted and determined in a summary manner by complaint before a justice of the peace, and, on conviction thereof, the offender may be punished by fine not less than five, nor more than one hundred dollars, according to the nature of the offence.

Certain assaults indictable. SEC. 225. The last section shall not extend to the trial of any case of riot, or unlawful assembly, nor to any assault with intent to murder, kill, maim, rob, or commit a rape; but such offences shall be punishable by indictment in the District Court.

Justice, how to proceed, not having jurisdiction. SEC. 226. If, in the progress of any trial before a justice of the peace, under the provisions of this chapter, it shall appear that the accused ought to be put upon his trial for an offence not cognizable before a justice of the peace, such justice shall immediately stop all further proceedings before him, and proceed as in other criminal cases exclusively cognizable before the District Court.

Powers of justice to preserve public peace. SEC. 227. Justices of the peace shall have power to cause all laws, made for the preservation of the public peace, to be kept; and, in the execution of that power, may cause persons to be apprehended, and require them to give security to keep the peace, in the manner provided by law. And any justice may summon to his assistance all persons present, whose duty it shall be to aid him in preserving the peace, and in arresting and securing the offenders, and any person who shall, when summoned to aid in arresting and securing an offender, refuse to give his assistance, shall pay a fine, not more than twenty, nor less than five dollars, for the use of the county.

Breach of recognizance. SEC. 228. In case of the breach of any recognizance, or undertaking, entered into in a criminal case before a justice of the peace, the same shall be certified by the justice, and returned to the District Court to be proceeded in according to law.

SEC. 229. All fines, imposed by virtue of the provisions of this chapter, or any part thereof, collected by any justice of the peace, Fines to be paid county treasurer.

sheriff, or constable, shall, within thirty days after the receipt thereof, be paid over to the county treasurer, to be distributed according to law.

Penalty for neglecting

SEC. 230. If any officer who shall have received any such fine, or any part thereof, shall neglect to pay the same, pursuant to the foregoing provision, it shall be the duty of the prosecuting attorney immediately to commence an action therefor, and to prosecute the same diligently to effect.

County, when to pay costs.

SEC. 231. If any person accused shall, upon trial before a justice of the peace, be acquitted, and the complainant be not adjudged to pay costs, as provided in section two hundred and seventeen, the costs of prosecution on such a case shall be paid by the county; and in all cases when the person accused shall be convicted, but the costs of prosecution cannot be collected from him, such costs shall be paid by the county.

Justice may require complainant to pay costs.

SEC. 232. The justice may, if he deem proper, require any complainant to give security for costs, as in civil cases, and if he refuse, the justice may dismiss the complaint.

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## FORMS IN CIVIL ACTIONS IN JUSTICES' COURTS.

The following, or equivalent forms, may be used by justices of the peace in civil actions, and proceedings under this chapter; to wit:

### FORM OF A SUMMONS.

*Territory of Oregon,* } *ss:*
*County of* }

To the sheriff, or any constable of said county:

Form of summons.

In the name of the United States, you are hereby commanded to summon C. D., if he be found in your county, to be and appear before the undersigned, a justice of the peace in and for said county, on the day , 18 , at o'clock in the noon, at his office in , to answer to A. B., in a civil action; and have you then and there this writ.

Given under my hand this day , 18 .

J. P., *Justice of the Peace.*

### FORM OF A WARRANT.

*Territory of Oregon,* } *ss:*
*County of* }

To the sheriff, or any constable of said county:

Ib. Of warrant.

In the name of the United States, you are hereby commanded to take the body of C. D., if he be found within your county, and bring him forthwith before the undersigned, one of the justices of the peace in and for said county, at his office in , to answer A. B., in a civil action; and you are hereby commanded to give due notice thereof to the said plaintiff, his agent or attorney; and have you then and there this writ.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

## FORM OF SUBPŒNA.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or any constable of said county:

Form of subpœna. In the name of the United States, you are hereby required to appear before the undersigned, one of the justices of the peace in and for the said county, on the day of , 18 , at o'clock in the noon, at his office in , to give evidence in a certain cause, then and there to be tried between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff (or defendant, as the case may be.)

Given under my hand, this day of 18 .

J. P., *Justice of the Peace.*

## FORM OF A VENIRE FOR A JURY.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or any constable of said county:

Ib. Of venire. In the name of the United States, you are hereby commanded to summon six good and lawful men, of your county, to be, and appear before the undersigned, one of the justices of the peace in and for said county, on the day of 18 , at o'clock in the noon of said day, at his office in , to make a jury for the trial of a civil action between A. B., plaintiff, and C. D., defendant; and have you then and there this writ.

Given under my hand, this day of 18 .

J. P., *Justice of the Peace.*

## FORM OF EXECUTION.

*Territory of Oregon,*
*County of* } *ss:*

Form of execution. To the sheriff, or any constable of said county:

Whereas judgment against C. D., for the sum of dollars, and for dollars, costs of suit, was recovered on the day of , 18 , before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B.: These are therefore, in the name of the United States, to command you to levy on the goods and chattels of the said C. D., (excepting such as the law exempts,) and make sale thereof according to law, to the amount of the said sum, and the costs upon this writ, and the same return to me within thirty days, to be rendered to the said A. B., for his debt, interest and costs.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

## FORM OF EXECUTION AGAINST THE BODY.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or any constable of said county:

Ib. Against the body. Whereas judgment against C. D., for the sum of dollars, and for dollars, costs of suit, was recovered on the day of , 18 , before the undersigned, one of the justices of the peace in and for said county, at the suit of A. B., and an execution against his property, returned unsatisfied: These are therefore, in the name of the United States, to command you to take the body of the said C. D, and him convey and deliver to the keeper of the jail of the said county, who is hereby commanded to receive and keep the said C. D. in safe custody in prison, until the aforesaid sum, and all legal expenses, be paid and satisfied, or until he be discharged therefrom by due course of law; and of this writ make due return within thirty days.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

### FORM OF EXECUTION AGAINST PRINCIPAL AND SURETY, AFTER EXPIRATION OF STAY OF EXECUTION.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or any constable of said county:

**Form of execution against principal and surety, &c.**

Whereas judgment against C. D., for the sum of dollars, and for dollars, costs of suit, was recovered on the day of , 18 , before the undersigned, one of the justices of the peace, at the suit of A. B.; and whereas, on the day of , 18 , E. F. became surety to pay the said judgment and costs in month from the date of the judgment aforesaid, agreeably to law, in the payment of which the said C. D. and E. F. have failed: These are therefore, in the name, &c., (as in the common form.)

### FORM OF ORDER IN REPLEVIN.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or any constable of said county:

**Form of order in replevin.**

In the name of the United States, you are hereby commanded to take the personal property mentioned and described in the within affidavit, and deliver the same to the plaintiff, upon receiving a proper undertaking, unless before such delivery the defendant enter into a sufficient undertaking for the delivery thereof to the plaintiff, if delivery be adjudged.

Given under my hand, this day of 18 .

J. P., *Justice of the Peace.*

### FORM OF A WRIT OF ATTACHMENT.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or any constable of said county:

**Ib. Of writ of attachment**

In the name of the United States, you are commanded to attach and safely keep the goods and chattels, moneys, effects and credits of C. D., (excepting such as the law exempts,) or so much thereof as shall satisfy the sum of dollars, with interest and costs of suit, in whoseoever hands or possession the same may be found in your county, and so provide that the goods and chattels so attached may be subject to further proceedings thereon, as the law requires; and of this writ make legal service, and due return.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

### FORM OF SUMMONS IN FORCIBLE ENTRY AND DETAINER.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or constable of said county;

Form of summons in forcible entry and detainer.

Whereas A. B., of , hath exhibited unto the undersigned, one of the justices of the peace in and for said county, a complaint against C. D., for a forcible entry and detainer of the following premises; to wit, ; therefore, in the name of the United States, you are hereby commanded to summon the said C. D., if he be found in your county, to appear before the undersigned on the day of , 18 , at o'clock in the noon, at his office in , then and there to make answer to and defend against the complaint aforesaid; and you are also hereby commanded to serve a copy of the said complaint on the said C. D., and of this writ make due return, with your doings thereon.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

### FORM OF WRIT OF RESTITUTION IN FORCIBLE ENTRY AND DETAINER.

*Territory of Oregon,*
*County of* } *ss:*

To the sheriff, or any constable of said county:

Form of writ of restitution, &c.

Whereas, A. B. did make complaint in writing to the undersigned, a justice of the peace in and for said county, against C. D., of the said county, that he had been guilty of a forcible entry and detainer of a certain tract of land (or other possessions,) of the said A. B., and whereas a jury was impanneled and sworn to inquire of said complaint, and did return their verdict that the said C. D. was guilty of a forcible entry and detainer of the following described tract of land, to wit: (here describe the premises of which the defendant is found guilty of forcibly entering and detaining;) and whereas judgment was entered thereon by said justice, and that the said A. B. should have restitution of the premises; therefore, in the name of the United States, you are hereby commanded to cause the said C. D. to be forthwith removed from the premises aforesaid, and that the said A. B. have peaceable restitution of the same; and also, that you levy of the goods and chattels of C. D., found in your county, the sum of dollars, being the amount of costs, on the trial aforesaid, together with dollars for this writ, and also your own fees, and make return of this writ within thirty days next after the date hereof.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

## FORM OF UNDERTAKING FOR AN ARREST.

Form of undertaking for an arrest.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for county, for a warrant to arrest C. D., defendant, founded upon an affidavit of the said plaintiff, setting forth that, &c.; (here state the cause for the arrest:) Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D. in the sum of dollars, to pay all costs that may be awarded to the said defendant, and all damages which he may sustain by reason of the arrest, not exceeding the sum of dollars.

Dated this day of , 18 .

A. B.
E. F.

## FORM OF UNDERTAKING IN REPLEVIN.

Ib. Of undertaking in replevin.

Whereas, A. B., plaintiff, has commenced an action before J. P., one of the justices of the peace in and for county, against C. D., defendant, for the recovery of certain personal property mentioned and described in the affidavit of the plaintiff, to wit: (here set forth the property claimed:) Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto C. D. in the sum of dollars, for the prosecution of the action, for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff.

Dated the day of , 18 .

A. B
E. F.
G. H.

## FORM OF UNDERTAKING IN ATTACHMENT.

Form of undertaking in attachment.

Whereas, an application has been made by A. B., plaintiff, to J. P., one of the justices of the peace in and for county, for a writ of attachment against the personal property of C. D., defendant, (a foreign corporation, a non-resident, or because he has assigned, secreted, &c.:) Now, therefore, we, A. B., plaintiff, and E. F., acknowledge ourselves bound to C. D. in the sum of dollars, that if the defendant recover judgment in this action, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the said attachment, not exceeding the sum of dollars.

Dated the day of , 18 .

A. B.
E. F.

## FORM OF UNDERTAKING TO DISCHARGE ATTACHMENT.

Ib. To discharge attachment

Whereas, a writ of attachment has been issued by J. P., one of the justices of the peace in and for county, against the personal property of C. D., defendant, in an action in which A. B. is plaintiff: Now, therefore, we, C. D., defendant, E. F. and G. H., acknowledge ourselves bound unto J. K., constable, in the sum of dollars, (double the value of the property,) engaging to redeliver the property attached, to wit: (here set forth a list of articles attached:) or pay the value thereof to the sheriff or constable to whom execution upon a judgment, obtained by the plaintiff in the aforesaid action, may be issued.

Dated this day of , 18 .

C. D.
E. F.
G. H.

### FORM OF UNDERTAKING TO INDEMNIFY CONSTABLE, ON CLAIM OF PROPERTY BY A THIRD PERSON.

Form of undertaking to indemnify constables, on claim of property by a third person.

Whereas, L. M. claims to be the owner of, and have the right to the possession of certain personal property, to wit: (here describe it:) which has been taken by J. K., constable in county, upon an execution issued by J. P., justice of the peace in and for the county of , upon a judgment obtained by A. B., plaintiff, against C. D., defendant: Now, therefore, we, A. B., plaintiff, E. F. and G. H., acknowledge ourselves bound unto the said J. K., constable, in the sum of dollars, to indemnify the said J. K. against such claim.

A. B.
E. F.
G. H.

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## FORMS OF PROCEEDINGS IN CRIMINAL CASES.

The following, or equivalent forms, may be used by justices of the peace, in criminal proceedings under this chapter:

### FORM OF WARRANT.

*Territory of Oregon,* }
*County of* } *ss:*

To the sheriff, or any constable of said county:

Form of warrant.

Whereas A. B. has this day complained in writing, under oath, to the undersigned, one of the justices of the peace in and for said county, that on the day of , 18 , at , in said county, (here insert the substance of the complaint, whatever it may be:) Therefore, in the name of the United States, you are commanded forthwith to apprehend the said C. D., and bring him before me to be dealt with according to law.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

### FORM OF AN EXECUTION.

*Territory of Oregon,* }
*County of* } *ss:*

To the sheriff, or any constable of said county:

Ib. Execution.

Whereas at a justice's court held at my office in said county, for the trial of C. D., for the offence hereinafter stated, the said C. D. was convicted of having, on the day of , 18 , in said county, committed, (here state the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of dollars, and dollars costs; and whereas the said fine and costs have not been paid: These are therefore, in the name of the United States, to command you to levy on the goods and chattels, &c., (as in execution in civil cases.)

FORM OF CERTIFICATE OF CONVICTION.

*Territory of Oregon,*
*County of* } *ss:*

Form of certificate of conviction.

At a justice's court held at my office in said county, before me, one of the justices of the peace in and for said county, for the trial of C. D. for the offence hereinafter stated, the said C. D. was convicted of having, on the day of , 18 , at , in said county of , (here insert the offence,) and upon conviction the said court did adjudge and determine that the said C. D. should pay a fine of dollars, (or be imprisoned as the case may be,) and the said fine has been paid to me.

Given under my hand, this day of , 18 .
J. P., *Justice of the Peace.*

FORM OF COMMITMENT UPON SENTENCE.

*Territory of Oregon,*
*County of* } *ss:*

Form of commitment on sentence.

To any constable, and the keeper of the common jail of said county:

Whereas at a justice's court, held at my office in said county, for the trial of C. D. for the offence hereinafter stated, the said C. D. was convicted of having, on the day of 18 , in said county, committed, (here state the offence,) and upon conviction, the said court did adjudge and determine that the said C. D. should be imprisoned in the common county jail of said county for days: Therefore, you, the said constable, are commanded, in the name of the United States, forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody in the said jail, and him there safely keep until the expiration of said days, or until he shall thence be discharged by due course of law.

Given under my hand, this day of , 18 .
J. P., *Justice of the Peace.*

FORM OF WARRANT TO KEEP THE PEACE.

*Territory of Oregon,*
*County of* } *ss:*

Ib. of warrant to keep the peace.

To the sheriff, or any constable of said county:

Whereas, A. B. has this day complained in writing, under oath, to the undersigned, one of the justices of the peace in and for said county, that he has just cause to fear, and does fear that C. D., late of said county, will (here state the threatened injury, or violence as sworn to:) Therefore, in the name of the United States, you are commanded to apprend the said C. D., and bring him forthwith before me, to show cause why he should not give surety to keep the peace, and be of good behavior towards all the people of this territory, and the said A. B. especially, and further to be dealt with according to law.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

FORM OF COMMITMENT TO ANSWER IN THE DISTRICT COURT.

*Territory of Oregon,*
*County of* } *ss.*

To any constable, and to the keeper of the common jail of said county:

Form of commitment to answer in District C't.

Whereas, on the day of 18 , A. B. made complaint in writing, and on oath, before the undersigned, one of the justices of the peace in and for said county, charging C. D. with having, on the day of , 18 , committed the crime of larceny, (or other crime, as the case may be,) and the said C. D. having been brought before and examined by me, and it being sufficiently proved to me that the said C. D. has, in said county, committed the crime of larceny, (or other crime,) by stealing one bay horse, of the value of dollars, of the goods and chattels of the said A. B.; and he, the said C. D., having failed to give bail for his appearance to answer at the next term of the District Court, in the sum of dollars, as required by me: Therefore, in the name of the United States, you, the said constable, are commanded forthwith to convey and deliver the said C. D. to the said keeper; and you, the said keeper, are hereby commanded to receive the said C. D. into your custody, in the said jail, and him there safely keep, until he be discharged by due course of law.

Given under my hand, this day of , 18 .

J. P., *Justice of the Peace.*

FORM OF COMMITMENT WHEN JUSTICE, ON THE TRIAL, SHALL FIND THAT HE HAS NO JURISDICTION OF THE CASE.

*Territory of Oregon,*
*County of* } *ss:*

To any constable, and to the keeper of the common jail of said county:

Form of commitment, when justice has not jurisdiction.

Whereas C. D., of &c., has been brought this day before the undersigned, one of the justices of the peace in and for said county, charged, on the oath of A. B., with having, on the day of , 18 , in said county, committed the offence of (here state the offence charged in the warrant,) and in the progress of the trial of said charge, it appearing to the said justice that the said C. D. has been guilty of the offence of (here state the new offence found on the trial, committed at the time and place aforesaid, of which offence the justice has not final jurisdiction;) and whereas the said C. D. has failed to give bail in the sum of dollars, for his appearance to answer at the next term of the District Court, as required by me: Therefore, in the name of the United States, &c., (as in the last form.)

### FORM OF SEARCH WARRANT.

*Territory of Oregon,* } *ss:*
*County of* }

To the sheriff, or any constable of said county:

Form of search warrant.

Whereas A. B. has this day made complaint on oath, to the undersigned, one of the justices of the peace in and for said county, that the following goods and chattels, to wit: (here describe them:) the property of the said A. B., have, within days past, (or were on the day of ,) by some person or persons unknown, been stolen, taken and carried away out of the possession of said A. B. in the county aforesaid; and also that the said A. B. verily believes that the said goods, or a part thereof, are concealed in or about the house of C. D. in said county, (describing the premises to be searched:) Therefore, in the name of the United States, you are commanded that, with the necessary and proper assistance, you enter into the said house, (describe the premises to be searched,) and then diligently search for the said goods and chattels, and if the same or any part thereof be found on such search, bring the same, as also the said C. D., forthwith before me to be disposed of according to law.

Given under my hand, this day of , 18 ,
J. P., *Justice of the Peace.*

### FORM OF RECOGNIZANCE TO APPEAR AT DISTRICT COURT.

Form of recognizance to appear at District Court.

Be it remembered that, on the day of , 18 , before me a justice of the peace in and for said county, personally came C. D. and E. F., and acknowledged themselves each to owe the territory of Oregon dollars. The condition of this recognizance is such that if the said C. D. shall personally appear at the District Court of said county, on the first day of the next term thereof, then and there to answer a charge of, (here name the offence with which the party is charged,) and abide the judgment of said court, and not depart without leave of the same; then this recognizance shall be void: otherwise in full force.

C. D.
E. F.

Taken and acknowledged before me, this day of , 18 .

J. P., *Justice of the Peace.*

SEC. 293. This act shall take effect and be in force from and after the first day of May next.

*Passed January 12th,* 1854.

## *AN ACT* TO ESTABLISH A PROBATE COURT AND DEFINE ITS DUTIES AND POWERS.

# CHAPTER I.

## PROBATE COURT.

SEC. 1. Election of judge of probate, his term of office.
2. Title of Probate Court; its jurisdiction.
3. Election of probate judges, how conducted.
4. Judge when to take oath of office; form of oath, bond and action thereon.
5. Certain officers not eligible.
6. Power of judge of probate.
7. Extent of jurisdiction.
8. May grant administration on estate of prisoners for life.
9. Power of judge to cite witnesses, trustees, &c.
10. Jurisdiction over estates of persons under guardianship, &c.
11. Issue of process by judge of probate; seal of office.
12. Sheriffs, &c., to execute process.
13. Court of Probate a court of record.
14. Judge of probate may punish for contempt.
15. Court of Probate when and where to be held.
16. Cases when judge of probate shall not act as judge.
17. Administration in such case granted by another judge of probate.
18. Judge of probate when not to act, or practice as attorney, &c.
19. Certain affidavits to be taken only by judge of probate.
20. Appeal from decision of judge of probate, to District Court.
21. Bond of appellant, where to be filed.
22. Judge may grant an appeal with or without bond, when an insane person or minor is a party.
23. Appeal when and where cognizable; proceedings on appeal.
24 Transcript of proceedings to be sent to appellate court.
25. Stay of proceedings after appeal allowed.
26. Appellate court may affirm or reverse decree.
27. Trial of facts on appeal.
28. Costs in Probate Court.
29. When judge of probate may issue commission to justice to administer oath.
30. Probate of will, &c., not to be granted after twenty years.
31. Act when to take effect.

Election of judge.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be elected by the qualified electors, in each of the organized counties of this territory, at the general election, after the expiration of the term of judges of probate now in office, one judge of probate, who shall have the qualification of a voter. The person duly elected and qualified, shall hold his office for three years, unless sooner removed for malconduct in office, and until his successor be elected and qualified.

Title of court; jurisdiction.

SEC. 2. The court established by this act, in each of the counties of this territory, shall be styled "the Probate Court of the county of          ," with such jurisdiction as may be prescribed to such courts by the laws of the territory.

Election, how conducted.

SEC. 3. All elections for judges of probate shall be conducted and returns made, as prescribed by the act regulating general elections in this territory; and the clerk of the board of county commissioners shall issue a certificate of election to the person duly elected under the provisions of this act.

Oath of judge.

SEC. 4. Every person elected a judge of probate in this territory, shall, within fifteen days after receiving his certificate, take and subscribe the following oath:

I, E. B., do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the laws of this territory; that I will administer justice without respect to persons; and faithfully and impartially discharge and perform all duties incumbent upon me as a judge of probate, according to the best of my abilities.

Signed, E. B.

*Territory of Oregon, county of* *ss:*

Subscribed and sworn to before me, this day of , 18 . G. D.

*Clerk of the board of county commissioners, in and for said county.*

Judge's bond.

Said oath shall be indorsed on the certificate of election, and filed, together with the certificate, in the office of the clerk of the board of county commissioners for the proper county; and every person elected a judge of probate shall, at the time of filing his oath of office with the clerk, enter into bonds with the board of commissioners for said county, with good security, to be by the said commissioners approved, in the sum of five hundred dollars, conditioned that he will deliver over to his successor all files, papers and books belonging to the probate office; that he will keep in good order the records of his court, with faithful and correct alphabets and indexes to the same, and perform all other duties belonging to his office: said bond shall be filed in the office of the clerk of the board of county commissioners, and any person aggrieved by a breach of the conditions thereof, may, by suit upon the bond in the District Court for the proper county, have judgment against the judge of probate and his securities, for such sum as he may show himself entitled to, with costs and interest, at the discretion of the court.

Certain officers not eligible.

SEC. 5. No sheriff, coroner, clerk of the District Court, county commissioner, or clerk of the board of county commissioners, shall be eligible to the office of judge of probate.

Power of judge.

11 Paige, 475. 1 Barb 372

SEC. 6. The judge of probate for each county, shall have and possess the following powers: original jurisdiction in all cases relating to the probate of last wills and testaments, the granting of letters testamentary and of administration, and revocation of the same, the appointing or displacing guardians over orphan minors, spendthrifts, and persons of unsound minds, and the binding orphan minors as apprentices: the settlement and allowance of all accounts against estates, and of executors, administrators and guardians; the hearing and determining all disputes and controversies respecting wills; the right to executorship, administration or guardianship, and respecting duties and accounts of executors, administrators or guardians; the hearing and determining all disputes and controversies between master and apprentice; the hearing and determining all suits and other proceedings instituted against executors and administrators, upon any demand against the estate of their testator or intestate.

Extent of jurisdiction.

SEC. 7. His jurisdiction shall extend over the estates of all persons deceased, who, at the time of their decease, were inhabitants of, or residents in, the same county, and all who shall die without the territory, leaving any estate within said county, or whose estate may afterwards be found in said county.

Administration on estate of prisoners for life.

SEC. 8. He may, upon the application of the party or parties interested, grant administration on the estate of any person who, by due course of law, shall be under sentence of imprisonment for life, in the penitentiary, whether by commutation of a previous sentence, or otherwise.

Power to cite witnesses, trustees, &c.

SEC. 9. He shall have authority to cause to come before him by citation, all and every person or persons whom he may deem it necessary to examine as witnesses, or who, as executors, administrators, guardians or otherwise, shall be entrusted with, or in any way accountable for any lands, tenements, goods or chattels belonging to any minor, orphan or person of unsound mind, or the estate of any deceased person; and may examine on oath or affirmation, such person or persons, touching any such estate or guardianship, before him; and any such person summoned to appear before him, who shall refuse so to appear, or when present shall refuse to be examined as a witness, touching such estate or guardianship, shall be liable to be punished as for contempt.

Jurisdiction.

SEC. 10. He shall have jurisdiction in all matters relating to the estates of such persons as are under guardianship, and the settlement of the same; and his jurisdiction shall extend to whatever else may, by law, rightfully come under his cognizance; and when a case shall originally be within the jurisdiction of the Probate Court of two or more counties, the court which shall first take cognizance thereof, by the commencement of proceedings, shall retain the same, throughout exclusively.

Issue of process.

SEC. 11. He shall have authority to issue whatever process may be necessary for the discharge of his official duties, and he shall have a seal of office.

Sheriffs, &c., to obey process.

SEC. 12. Sheriffs, their deputies, coroners and constables, shall serve and execute all legal warrants and processes, by him directed to them.

Court to be court of record.

SEC. 13. The court established by this act, shall be a court of record, and shall keep just and faithful record of its proceedings, and the judge thereof shall have the care and custody of all files, papers and books belonging to the same, and record all wills and other instruments in writing, required by law to be put on record.

Contempt, how punished.

SEC. 14. Contempt of his authority or office, in any cause on hearing before him, may be punished in like manner as such contempt may be punished in the District Court.

Court, when and where to be held.

SEC. 15. The judge of probate for each county in this territory, shall hold a court at the seat of justice, or usual place of holding the District Court in such county, on the first Tuesday of every month.

When judge shall not act.

SEC. 16. When any judge of probate shall be interested as heir, legatee, creditor, debtor or within the degree of kindred, by means of which by law, he might, by any possibility, be heir to any part of the estate of any person deceased, leaving property to be administered in his county, such estate shall be settled in the Probate Court for the most ancient adjoining county. If his interest commence at any time after he shall have regularly assumed jurisdiction of such estate, further proceedings therein shall be transferred to the Probate Court held in the most ancient adjoining county.

Administration granted by another judge.

SEC. 17. The will of any such deceased person may be there proven or administration granted, as the case may require, and all subsequent proceedings had thereon, in like manner as if the deceased had died in that county.

Judge not to practice, &c.,

SEC. 18. No judge of probate shall have a voice in judging and determining, nor be attorney or counsellor, in or out of court, in any civil action whatever, which may depend on or relate to any sentence or decree made by him in his office; nor be attorney or counsellor in any civil action, for or against any executor, administrator or trustee, under any last will and testament, or guardian, as such, within his county.

Taking and filing affidavits.

SEC. 19. All affidavits required to be taken in relation to, or in any wise pertaining to any proceeding in the Probate Court, shall be administered by the judge of probate, and by him recorded or filed, as the case may be, in his office.

Appeal.

SEC. 20. Any person aggrieved by any order, allowance, sentence, decree or denial of any judge of probate, or any other act in his official capacity, may appeal therefrom to the District Court within and for the same county: *Provided*, The appeal be taken within twenty days from the date of the proceedings appealed from.

Bond of appellant.

SEC. 21. The appellant shall make his bond to the adverse party, for such sum and with such security as the judge shall approve, conditioned for the prosecution of his appeal, with effect, at the next term of the District Court for the same county, and in case he fail in such prosecution, to pay all costs and damages already accrued, and such costs as may be taxed against him by said District court. Said bond shall be filed in the probate office, for the use of the adverse party.

Granting an appeal when minor, &c., a party.

SEC. 22. In case of any controversy wherein an insane person, or other person under guardianship is a party, the Probate Court may, at its discretion, grant an appeal on the part of the ward, without bond being given as aforesaid: *Provided*, That all other requirements in relation to appeal be complied with. This act shall not be so construed as to require any executor or administrator to enter into bonds to entitle him to an appeal.

Appeal, when and where cognizable.

SEC. 23. Appeals shall be cognizable at the next term of the District Court, which shall be holden after the expiration of twenty-four days after such appeal shall have been allowed, and the appellant shall file the reasons for his appeal with the court appealed from, and shall serve all parties who have appeared before the judge of probate in the case, with a copy of such reasons, under the official signature of the probate judge, fifteen days before the sitting of the court to which the appeal is made.

Transcript, &c., to appellate court.

SEC. 24. When an appeal is granted, the judge of the court appealed from shall transmit to the clerk of the District Court, under his official signature, a transcript of the records and proceedings relative to the cause, together with the original papers relating thereto.

Stay of proceedings after appeal allowed.

SEC. 25. After an appeal is allowed, the bond filed, and the reason served in compliance with this act, all further proceedings in relation to the order, decree, sentence, or denial appealed from, shall cease until the determination of the court or courts above.

Court may reverse or affirm decree.

SEC. 26. The court above may reverse or affirm, in whole or in part, the sentence or proceeding appealed from, and may make such decree or order thereon, as the judge of probate should have made, and shall remit the case to the court from whence it came, for further proceedings.

Trial of facts

SEC. 27. If, upon hearing an appeal in the court above, any question of fact shall occur that is proper for a jury to try, the court may, at its discretion, cause it to be tried upon an issue to be formed for that purpose, under the direction of the court.

Costs.

SEC. 28. In all cases that are contested in a probate court, the said court may, at its discretion, award costs to either party, to be paid by the party in default, and may issue execution for the same, in like manner as such executions are issued out of the District Court.

Issue of commission to justice to administer oath.

SEC. 29. If any person required to make oath to any instrument in writing, which is to be used before a judge of probate, shall be unable to attend by reason of infirmity or otherwise, or shall reside without the county where the Court of Probate is holden, it shall be lawful for said judge, by commission issued for the purpose, to authorize any disinterested justice of the peace to administer such oath, who shall return a certificate thereof to the judge, together with the commission and instruments in writing annexed.

Probate not to be granted after twenty years.

SEC. 30. No probate of any last will, nor administration on the estate of any person deceased, shall be originally granted after the expiration of twenty years from his decease.

Act, when to take effect.

SEC. 31. This act shall take effect and be in force from and after the first day of May next.

*Passed December 15th,* 1853.

## *AN ACT* RESPECTING EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL ESTATE

# CHAPTER I.

## EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL PROPERTY.

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CHAP. 1.

Letters testamentary, where granted.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That, upon the decease of any inhabitant of this territory, letters testamentary, or letters of administration on his estate, shall be granted by the Probate Court for the county, in which the mansion house or place of abode of the deceased was situated, at the time of his death. If he had no mansion-house, or place of abode in this territory at the time of his death, and be possessed of lands in this territory, letters may be granted in the county in which such land, or a part thereof lies. If the deceased had neither mansion-house, place of abode, nor lands in this territory at the time of his death, letters testamentary or of administration, may be granted in the county where he died, or in which the greater part of his estate may be. If he died out of this territory, having neither mansion-house, place of abode, or lands in this territory, such letters may be granted in any county where his estate or a part of it may be.

Trials, &c., where had.

SEC. 2. All orders, settlements, trials and other proceedings, entrusted by this act to the Probate Court, shall be had or made in the county in which letters testamentary or of administration were granted.

Persons incompetent to act.

SEC. 3. No judge of probate, in his own county, and no person under twenty-one years of age, or of unsound mind, shall be executor or administrator; nor shall the executor of an executor, in consequence thereof, be executor of the first testator: *Provided,* That this chapter shall not be so construed as to prevent a widow, under twenty-one years of age, from acting as the executrix or administratrix of the deceased husband's estate.

Letters of administration, to whom granted, and in what order.

SEC. 4. Letters of administration shall be granted:

1. To the widow or next of kin, or both, as the judge of probate shall think fit, and if they do not, voluntarily, either take or renounce the administration, they shall, if resident in the county, be cited for that purpose by the judge;

2. If persons so entitled to administration are incompetent or evidently unsuitable for the discharge of the trust, or if they neglect, without any sufficient cause, for sixty days after the decease of the intestate, to take administration of his estate, the judge of probate may grant letters to one or more of the principal creditors, if there be any competent and willing to undertake the trust;

3. If there be no such creditor, the judge of probate shall commit administration to such other person as he shall think fit: *Provided, however,*

4. That, if the deceased were a married woman, administration of her estate shall, in all cases, be granted to her husband, if competent and willing to undertake the trust, unless by force of a marriage settlement, or otherwise, she shall have made some testamentary disposition of her separate estate, or some other provision which shall render it necessary or proper to appoint some other person to administer her estate.

When executors named in will, refuse to act.

SEC. 5. After the probate of any will, letters testamentary shall be granted to the persons therein appointed executors. If a part of the persons thus appointed refuse to act, or be disqualified, the letters shall be granted to the other persons appointed therein; if all such persons refuse to act, or be disqualified, letters of administration with the will annexed, shall be granted to the person to whom administration would have been granted, if there had been no will.

Co-executor not to act without giving bond.

SEC. 6. When there are two or more persons named co-executors in any will, none shall have authority to act as such, or intermeddle, except those who give bond.

Bond.

Penalty and condition. 2 Hill, 226; 2 Barb Ch. 427; 5 Barb. 451

SEC. 7. Every executor or administrator, before entering upon the execution of his trust, shall give bond, with sufficient sureties, resident in this territory, in such sum as the judge of probate shall order, payable to the territory of Oregon. The form of the bond shall be joint and several, and the penalty shall not be less than twice the value of the estate; which value shall be ascertained by the probate judge, by examination on oath of the party applying, and of any other persons he may think proper to examine. The bond shall be conditioned that the executor or administrator shall faithfully execute the duties of his trust, according to law.

Executors to give separate bonds.

SEC. 8. When two or more persons shall be appointed executors or administrators, the probate judge shall take a separate bond from each of them.

When executor is a minor or absentee.

SEC. 9. If the executor be a minor, or absent from the territory, letters of administration, with the will annexed, shall be granted during the time of such minority or absence, to some other person, unless there be another executor who shall accept the trust, in which case the estate shall be administered by such other executor, until the disqualification shall be removed, when such minor, having arrived at full age, or such absentee, shall be admitted as joint executor with the former, on giving bond as before required.

Bond of executor appointed with will annexed

SEC. 10. Every person who shall be appointed administrator, with the will annexed, shall, before entering upon the execution of his trust, give bond to the territory of Oregon, in like manner and with like condition as is required of an executor: *Provided*, That when such administrator shall be appointed in pursuance of the last preceding section, there shall be added to such condition in his bond, as follows: and to deliver the letters of administration into the Probate Court, in case such minor shall become of full age, or said absent executor return, and obtain letters testamentary on the estate.

Appointment of special administrator.

SEC. 11. When, by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary, or of administration, the judge of probate may, in his discretion, appoint a special administrator to collect and preserve the effects of the deceased, and in case of an appeal from the decree appointing such special administrator, he shall, nevertheless, proceed in the execution of his trust, until he shall be otherwise ordered by the District Court, to which such appeal is taken.

His bond.

SEC. 12. Every such administrator shall, before entering on the duties of his trust, give bond, with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the territory of Oregon, with condition as required of an executor or administrator, in other cases, to make and return into the Probate Court, within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge; and that he will truly account, on oath, for all the goods, chattels, debts and effects of the deceased, that shall be received by him as such special administrator, whenever required by the judge of probate, and will deliver the same to the person who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

Duties and powers of special administrators.

SEC. 13. Such special administrator shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator, who shall thereafter be appointed, and for that purpose may commence and maintain suits as an administrator; and may also sell such perishable and other goods as the judge of probate shall order to be sold, and he shall be allowed such compensation for his services, as the judge of probate shall deem reasonable.

Ib. Power, &c., to cease on granting letters testamentary.

SEC. 14. Upon granting letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator, all the goods, chattels, money and effects of the deceased in his hands; and the executor or administrator may be admitted to prosecute any suit commenced by the special administrator, in like manner as an administrator *de bonis non* is authorized to prosecute a suit commenced by a former executor or administrator.

Special administrators not liable to creditors of deceased.

SEC. 15. Such special administrator shall not be liable to an action by any creditor of the deceased; and the time of limitation for all suits against the estate, shall begin to run from the time of granting letters testamentary or of administration in usual form, in like manner as if such special administration had not been granted.

Application for letters of administration.

SEC. 16. Application for letters of administration shall be made by petition in writing, signed by the applicant or his attorney, and filed in the Probate Court, which petition shall set forth the facts essential to give the court jurisdiction of the case; and such applicant, at the time of making such application, shall make an affidavit, stating to the best of his knowledge and belief, the names and places of residence of the heirs of the deceased; that the deceased died without a will; that he will make a perfect inventory of, and faithfully administer all the estate of the deceased, pay the debts, as far as the assets will extend and the law direct, and account for and pay over all assets which shall come to his possession or knowledge.

Affidavit by administrator de bonis non.

SEC. 17. A similar affidavit, with such variations as the case may require, shall be made by administrators, of the goods remaining unadministered, and by administrators during the time of a contest about a will, or the granting of letters of administration.

Oath of administrator, &c.

SEC. 18. Every administrator with the will annexed, and executor, at the time letters are granted him, shall make an affidavit that he will make a perfect inventory of the estate, and faithfully execute the last will of the testator; pay the debts and legacies so far as the assets will extend, and the law direct, render just accounts, and faithfully perform all things required by law touching such executorship or administration.

Certain officers not to be sureties.

SEC. 19. No judge of the Probate Court, no sheriff, clerk of a court, or deputy of either, and no attorney at law, shall be taken as security in any bond required to be taken by this act.

Judge to take good security.

SEC. 20. The judge of probate shall take special care to take as sureties, men who are solvent and sufficient, and who are not bound in too many other bonds; and to satisfy himself he may take testimony, and examine on oath the applicant or persons offered as sureties.

Judge to record executor's, &c., bonds.

SEC. 21. The judge of probate shall record, in a well-bound book, kept for that purpose, all bonds given by executors and administrators, and preserve the originals in regular files.

Ib. Letters testamentary.

SEC. 22. The judge of probate shall record in a well-bound book, kept for that purpose, all letters testamentary and of administration, before they are delivered to the executors or administrators, and shall certify on such letters that they have been so recorded.

Certified copies evidence.

SEC. 23. Copies of such letters, or copies of the records thereof, certified by the probate judge, and under the seal of the Probate Court, shall be received as evidence in any court in this territory.

SEC. 24. Letters testamentary, issued to the executors under the provisions of this act, may be in the following form:

*Territory of Oregon,* } *ss:*
*County of* }

*To all persons to whom these presents shall come, greeting:*

Form of letters testamentary to executors.

Know ye, the last will and testament of A. B., deceased, hath in due form of law been exhibited, proven and recorded in the Probate Court, for county, a copy of which is hereto annexed; and inasmuch as it appears that C. D. hath been appointed executor in and by said last will and testament, to execute the same, and to the end that the property of the testator may be preserved for those who shall appear to have a legal right or interest therein, and that said last will and testament may be executed according to the will of the testator; we do hereby authorize him, the said C. D., as such executor, to collect and secure all and singular, the goods, chattels, rights and credits which were of the said A. B. at the time of his death, in whosesoever hands or possession the same may be found; and to perform and fulfil all such duties as may be enjoined upon him by said will, so far as there shall be property, and the law charge him; and in general to do and perform all other acts and things which now are, or hereafter may be required of him by law.

In testimony whereof, I, E. G., judge of the Probate Court for county, have hereunto signed my name, and affixed the seal of said court, at , in said county, this day of , A. D., 18 .

E. G., *Judge of Probate.*

[Seal of Probate Court.]

CHAP. 1.

SEC. 25. Letters of administration hereafter to be issued in this territory, may be in the following form:

*Territory of Oregon,*
*County of* } *ss:*

*To all persons to whom these presents shall come, greeting:*

Form of letters of administration.

Know ye, that whereas A. B., late of the county of ——, died intestate, as it is said, leaving at the time of his death property in this territory which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end, therefore, that said property may be collected, preserved and disposed of according to law, we do hereby appoint C. D. administrator of all the goods and chattels, rights and credits which were of the said A. B. at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are, or hereafter may be required of him by law.

In testimony whereof, I, E. G., judge of the Probate Court for —— county, have hereunto signed my name, and affixed the seal of said court, at —— in said county, this —— day of ——, A. D., 18—.

[Seal of Probate Court.] E. G., *Judge of Probate.*

Ib.

SEC. 26. In all cases where letters of administration with the will annexed, letters of administration to special administrators, or letters of administration *de bonis non*, shall hereafter be issued by the Probate Court, the same may be issued in conformity to the foregoing forms, with such variations as may suit each particular case.

Proceedings when will is found after administration granted.

SEC. 27. If, after letters of administration are granted, a will of the deceased be found, and probate thereof be granted, the letters shall be revoked; and letters testamentary or of administration, with the will annexed, shall be granted.

Ib If will be set aside.

SEC. 28. If, after a will has been found, and letters thereon granted, the will shall afterwards be set aside, the letters shall be revoked, and letters of administration granted on the goods unadministered.

Marriage of executrix.

SEC. 29. If any executrix or administratrix marry, her husband shall not thereby acquire any interest in the effects of her testator or intestate; nor shall the administration thereby devolve on him, but the marriage shall extinguish her powers and the letters be revoked.

Judge to revoke, &c., in certain cases.

SEC. 30. If any executor or administrator become of unsound mind, or be convicted of felony or other infamous crime, or become a habitual drunkard, or otherwise incapable of or unsuitable for executing the trust reposed in him, or fail to discharge his official duties, or waste or mismanage the estate, or act so as to endanger any co-executor or co-administrator, the Probate Court, upon complaint in writing made by any person interested, supported by affidavit, and due notice given to the person complained of, shall hear the complaint, and, if he find it just, shall revoke the letters granted.

SEC. 31. If any heir, legatee, creditor or other person interested in any estate, file in the Probate Court an affidavit, stating that the affiant has sufficient cause to believe that the sureties in the executor's or administrator's bond has or is likely to become insolvent; or has died or removed from the territory; or that the principal in such bond has or is likely to become insolvent, or is wasting the estate; or that the penalty of such bond is insufficient, or that such bond has not been taken according to law; and shall have given the principal in such bond at least ten days' notice of the complaint, the court shall examine into the complaint.

Legatees, &c., may apply in certain cases for relief. 11 Paige, 261.

SEC. 32. If any person, bound as surety in any executor's or administrator's bond, file in the Probate Court an affidavit, stating that the affiant has sufficient reason to believe, and does believe his co-surety has died, or has or is likely to become insolvent, or has removed from the territory; or the principal in such bond has or is likely to become insolvent, or is wasting the estate, and shall have given to the principal in such bond at least ten days' notice of such complaint, the court shall examine into the same.

Application by sureties for relief.

SEC. 33. If the Probate Court find the complaint mentioned in either of the two preceding sections to be just, it shall order another bond with sufficient sureties to be given.

New bond.

SEC. 34. Such additional bond, when given and approved, shall discharge the former sureties from any liability arising from the misconduct of the principal after the filing of the same; and such former securities shall only be liable for such misconduct as happened prior to the giving such new bond.

Former sureties not liable for subsequent acts of administrator.

SEC. 35. If such person fail to give such additional bond and sureties within ten days after making such order, his letters from thenceforth shall be deemed to be revoked, and his authority from that time cease.

Failure to give new bond in ten days.

SEC. 36. If any executor or administrator shall publish, for six weeks, in some newspaper in this territory, in general circulation in the county wherein his letters were granted, a notice of his intention to apply to the Probate Court to resign his letters, and the court, on proof of such publication, believe that he should be permitted to resign, it shall so order; said publication of notice in the newspaper, upon application to the Probate Court for that purpose, may be dispensed with, and instead thereof, the Probate Court may require said executor or administrator to post ten written or printed handbills containing said notice, in ten of the most public places in the county where his letters were granted, at least twenty days before the term of the court at which he makes application to resign his letters.

Resignations

SEC. 37. Such person shall then surrender his letters; his power from that time shall cease; and he shall pay the expenses of publication, and of all the proceedings on such application.

Ib.

SEC. 38. If there be no more than one executor or administrator of an estate, and the letters of part of them be revoked or surrendered, or a part die, or in any way become disqualified, those who remain shall perform all the duties required by law respecting the estate.

Co-executor becoming incompetent.

If all become incompetent. SEC. 39. If all the executors or administrators of an estate shall die, resign, or their letters be revoked, in cases not otherwise provided for, letters of administration of the goods remaining unadministered, shall be granted to those to whom administration would have been granted if the original letters had not been obtained, or the person obtaining them had renounced administration; and the administrator shall perform the like duties and incur the like liabilities as the former executors or administrators.

Liability of administrator, &c., after resignation, &c. SEC. 40. If any executor or administrator resign, or his letters be revoked, or he die, he or his legal representatives shall account for, pay and deliver to his successor, or to the surviving or remaining executor or administrator, all money and property of every kind, and all rights, credits, deeds, evidences of debt, and papers of every kind, of the deceased, at such time, and in such manner as the court shall order, on final settlement with such executor or administrator or his legal representatives.

Administrator may proceed against predecessor. SEC. 41. The succeeding administrator, remaining executor or administrator, may proceed at law against any delinquent, former executor or administrator, or his legal representatives, or the sureties of either, or against any other person possessed of any part of the estate.

Suits to be commenced in six years. SEC. 42. All suits against sureties shall be commenced within six years after the revocation or surrender of letters of administration, or death of the principal.

Failure to account yearly. SEC. 43. If any executor or administrator fail to make either annual or final settlement as required by law, and do not show good cause for such failure, after having been cited for that purpose by the Probate Court, it shall order such executor or administrator to give notice when required, and to make such settlement; and may enforce obedience to such order by attachment, and may revoke his letters.

Settlement after revocation, &c., how compelled. SEC. 44. If any person who has surrendered his letters testamentary or of administration, or whose letters have been revoked, or the legal representatives of any deceased executor or administrator, shall fail to make final settlement as required by law, after being cited for that purpose by the Probate Court, it shall order such delinquents to make such settlement, and may enforce obedience to such order by attachment.

Costs. SEC. 45. In all cases where citations or attachments may be issued against any executor, administrator or other person for failing to settle his accounts, such delinquent shall pay all costs incurred thereby.

Inventory of partnership effects. SEC. 46. The executor or administrator on the estate of any deceased member of a co-partnership, shall include in the inventory, which he is required by law to return to the Probate Court, the whole of the partnership property, goods, chattels, rights and credits appraised at their true value as in other cases; but the appraisers shall carry out, in the footing, an amount equal only to the deceased's proportional part of the co-partnership interest.

SEC. 47. The co-partnership property, thus appraised, shall remain with, or be delivered over, as the case may be, to the surviving partner or partners who may be disposed to undertake the management thereof, agreeably to the conditions of a bond which he or they shall be required to give to the territory of Oregon, in such sum and with such sureties as are required in other cases of administration.

Partnership effects, when under control of surviving partner.

Bond of surviving partner.

SEC. 48. The condition of such bond shall in substance be as follows:

The condition of the above bond is, that if A. B., or A. B. and C. D., surviving partner or partners of the late firm of , shall use due diligence and fidelity in closing the affairs of the said co-partnership, apply the proceeds thereof towards the payment of the co-partnership debts, render a true account on oath to the Probate Court, whenever required so to do by said court, of all the co-partnership affairs, and pay over within one year, unless a longer time be allowed by the Probate Court, to the executor or administrator, the excess, if any there be beyond satisfying the partnership debts; then this bond shall be void, otherwise remain in full force.

Power of court over surviving partner.

SEC. 49. The Probate Court shall have the same authority to cite such survivor or survivors to account and to adjudicate upon such account, as in the case of any ordinary administration; and the parties interested shall have the like remedies, by means of such bond, for misconduct or neglect of such survivor or survivors, as may be had against administrators.

Refusal, &c., of surviving partner to give bond.

SEC. 50. In case the surviving partner or partners, having been duly cited for that purpose, shall all neglect or refuse to give the bond required by law, the executor or administrator on the estate of such deceased partner, on giving a bond as provided in the following sections, shall forthwith take the whole partnership estate, goods, chattels, rights and credits into his own possession, and shall be authorized to use the name of the survivor or survivors in collecting the debts due the late firm if necessary, and shall, with the partnership property, pay the debts due from the late firm, and return or pay to the survivors, his or their proportion of the excess, if any.

New bond by executor before administering partnership effects.

SEC. 51. Before proceeding to administer upon such partnership property, as provided in the preceding section, such executor or administrator shall be required by the Probate Court to give further bond to its satisfaction, conditioned that he will faithfully execute his trust according to law, which bond may be enforced like other administration bonds.

Partner to exhibit effects to appraisers

SEC. 52. Every surviving partner, on demand of any administrator of a deceased partner, shall exhibit to the appraisers the partnership property belonging to the firm at the time of the death of such deceased partner, for appraisement; and, in case the administration thereof shall devolve upon such administrator, the said survivor or survivors shall surrender to him, on demand, all the property of such partnership, including their books, papers, and all necessary documents pertaining to the same, and shall afford him all reasonable information and facilities for the execution of his trust.

CHAP. 2.

Ib. In case of refusal may be committed.

SEC. 53. Every surviving partner who shall neglect or refuse to comply with the provisions of the preceding section, may be cited for such neglect or refusal to appear before the Probate Court; and, unless he comply with such provision, or show sufficient excuse for his omission, the Probate Court may commit him to the common jail of the county, there to remain until he comply, or be discharged by due course of law.

Non-residents not to administer.

SEC. 54. Letters testamentary or of administration shall not be granted to a non-resident of this territory; and when an executor or administrator shall become non-resident, the probate court having jurisdiction of the estate of the testator or intestate of such executor or administrator shall revoke his letters.

# CHAPTER II.

## OF THE INVENTORY AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

SEC. 1. Executor to make and return inventory, on oath, two months after appointment.
2. Estate, &c., to be appraised; appointment of appraisers; their fees how paid.
3. Appraisers before acting to take oath; appraisal how made, inventory what to contain.
4. Inventory what to contain.
5 The appointment of a debtor executor, not to discharge debt.
6 Discharge of any debt in a will, to be considered a specific bequest.
7. Inventory to be signed by appraiser and executor, and sworn to before judge of probate.
8. Liability of executor for not returning inventory after time allowed.
9. New assets discovered, to be appraised and inventoried; inventory to be returned.
10. Right of possession of executor, &c., to real and personal estate, &c.
11. Personal estate to be first liable for debts, &c., of deceased.
12. Persons embezzling before administration granted, liable in double value of the property.
13 Proceedings in case of suspected embezzlement, &c.
14. Person cited, refusing to appear and answer in case of suspected embezzlement, may be committed.
15. Proceedings to compel account by persons entrusted with any part of estate.

Return of inventory.

SECTION 1. Every executor or administrator shall make and return upon oath into the Probate Court, within two months after his appointment, a true inventory of the real and personal estate of the deceased which is by law to be administered, and which shall have come to his possession or knowledge.

Appraisers.

SEC. 2. The estate and effects comprised in the inventory, shall be appraised by three suitable disinterested persons, who shall be appointed by the judge of probate. If any part of the estate shall be in another county than that in which letters are issued, appraisers thereof may be appointed, either by the probate judge having jurisdiction of the case, or by the probate judge of such county, and such appraisers shall receive as compensation for their services three dollars per day, to be paid out of the estate.

Oath of appraisers.

SEC. 3. Before proceeding to the discharge of their duties, the appraisers, before any officer authorized to administer oaths, shall take and subscribe an oath to be attached to the inventory, that

Appraisal; Inventory.

they will honestly and impartially appraise the property which shall be exhibited to them, according to the best of their knowledge and ability: then they shall proceed to estimate and appraise the property, and set down each article separately, with the value thereof in dollars and cents in figures opposite the respective articles. The inventory shall contain all the estate of the deceased, real and personal, which is by law to be administered; a statement of all debts, partnership and other interests, bonds, mortgages, notes and other securities for the payment of money belonging to the deceased, specifying the name of the debtor in each security, the date, the sum originally payable, the indorsements thereon if any, and their dates, and the sum which, in the judgment of the appraisers, may be collectable on each debt, interest or security.

Inventory, what to contain.

SEC. 4. The inventory shall also contain an account of all moneys belonging to the deceased, which shall have come to the possession or knowledge of the executor or administrator; and if none shall come to his possession or knowledge, the fact shall be so stated in the inventory.

Naming executor in will, not to discharge debt.

SEC. 5. The naming any executor in a will, shall not operate as a discharge from any just claim which the testator had against the executor, but the claim shall be included in the inventory, and the executor shall be liable for the same, as for so much money in his hands at the time the debt or demand became due.

Discharge of debts by will invalid as to creditors.

SEC. 6. The discharge or bequest, in a will, of any debt or demand of the testator against any executor named in his will, or against any other person, shall not be valid against the creditors of the deceased, but shall be construed as a specific bequest of such debt or demand; and the amount thereof shall be included in the inventory, and shall, if necessary, be applied in payment of his debts; if not necessary for that purpose, it shall be paid in the same manner and proportion as other specific legacies.

Inventory to be signed and sworn to.

SEC. 7. The inventory shall be signed by the appraisers, and the executor or administrator shall take and subscribe on oath before the probate judge, that the inventory contains a true statement of all the estate of the deceased which has come to his possession or knowledge, and particularly of all moneys belonging to the deceased, and of all just claims of the deceased against the executor or administrator; and the oath shall be indorsed upon or annexed to the inventory.

Executor neglecting to return inventory.

SEC. 8. If any executor or administrator shall neglect or refuse to return the inventory within the time prescribed, or within such further time, not exceeding three months, as the court shall allow, the court shall revoke the letters, testamentary or of administration, and the executor or administrator shall be liable on his bond for any injury sustained by the estate through his neglect.

New assets.

SEC. 9. Whenever property, not mentioned in an inventory that shall have been made, shall come to the possession or knowledge of the executor or administrator, he shall cause the same to be appraised in the manner prescribed in this chapter, and an inventory to be returned, subscribed and sworn to as is provided in this chapter, within two months after the discovery thereof; and the

CHAP. 2 making of such inventory may be enforced, after notice, by attachment or removal from office.

Executor's, &c., right to possession of estate.

SEC. 10. The executor or administrator shall have a right to the possession of all the real as well as personal estate of the deceased, and may receive the rents and profits of the real estate until the estate shall be settled, or delivered over, by order of the Probate Court, to the heirs or devisees, and shall keep in good tenantable repair, all houses, buildings and fixtures thereon, which are under his control.

Personal estate first liable.

SEC. 11. The personal estate of the deceased, which shall come into the hands of the executor or administrator, shall be first chargeable with the payment of the debts and expenses; and if the goods, chattels, rights and credits in the hands of the executor or administrator, shall not be sufficient to pay the debts of the deceased, the expenses of administration, and the allowance to the family of the deceased, the whole, or so much as may be necessary of the real estate may be sold for that purpose by the executor or administrator, in the manner prescribed by this act.

Embezzlement before administration granted.

SEC. 12. If any person, before the granting of letters testamentary or of administration, shall embezzle or alienate any of the moneys, goods, chattels or effects of any deceased person, he shall stand chargeable, and be liable to the action of the executor or administrator of the estate, in double the value of the property so embezzled or alienated, to be recovered for the benefit of the estate.

Proceedings in case of suspected embezzlement, &c.

SEC. 13. If any executor, administrator, heir, legatee, creditor, or other person interested in the estate of any deceased person, shall complain to the probate judge, on oath, that any person is suspected of having concealed, embezzled, smuggled, conveyed away or disposed of any moneys, goods or chattels of the deceased, or that he has in his possession or knowledge, any deeds, conveyances, bonds, contracts or other writings which contain evidence of, or tend to disclose the right, title, interest or claim of the deceased, to any real or personal estate, or any claim, demand, or last will of the deceased, the said judge may cite such person to appear before the Probate Court, and may examine him on oath upon the matter of such complaint. If such person be not in the county where letters have been granted, he may be cited and examined, either before the Probate Court for the county where he may be found, or before the court issuing the order or citation; but, in the latter case, if he appear and be found innocent, his necessary expenses shall be allowed him out of the estate.

Penalty for neglecting citation.

SEC. 14. If the person so cited refuse to appear and submit to such examination, or to answer such interrogatories as may be put to him, touching the matter of such complaint, the court may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the Probate Court.

Persons entrusted with estate, how compelled to account.

SEC. 15. The probate judge, upon the complaint on oath of any executor or administrator, may cite any person who shall have been entrusted with any part of the estate of the deceased person, to appear before the Probate Court, and may require such person to give a full account, on oath, of any moneys, goods, chattels, bonds, accounts or other papers belonging to the estate, which shall have come to his possession, in trust for such executor or administrator, and of his proceedings thereon; and if the person so cited shall refuse to appear and answer such account, the court may proceed against him as provided in the preceding section.

# CHAPTER III.

## PROVISION FOR THE SUPPORT OF THE FAMILY.

SEC. 1. Widow or minor child may remain in homestead until, &c.—right to apparel, &c.
2. On return of inventory, court to set apart for widow and child certain property.
3. Further allowance, in case such property be insufficient
4 Executor to pay such allowance, in preference to all debts, except, &c.
5 Property exempt from execution, how distributed.
6 All of the estate of the deceased, when to be assigned to widow and children.
7. If there is no widow or child, all of the estate to be deemed assets.

Widow or child may remain in homestead; right to apparel, etc.

SECTION 1. When a person shall die, leaving a widow, minor child or children, the widow, child or children, shall, until letters have been granted and the inventory returned, be entitled to remain in possession of the homestead, and of all the wearing apparel of the family, and of all the household furniture of the deceased, and shall also be entitled to a reasonable provision for their support, to be allowed by the probate judge.

Property exempt from execution, set apart for their use

SEC. 2. Upon the return of the inventory, the court shall set apart, for the use of the widow, minor child or children, all the property of the estate by law exempt from execution.

Allowance in case such property insufficient

SEC. 3. If the amount thus exempt be insufficient for the support of the widow and minor child or children, the Probate Court shall make such further reasonable allowance out of the estate, as may be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate; but no such allowance shall be made after one year from the granting letters testamentary or of administration.

Allowance, how paid.

SEC. 4. Any allowance made by the court in accordance with the provisions of the preceding section, shall be paid by the executor or administrator, in preference to all other charges, except funeral charges, and expenses of administration.

Property exempt, how distributed.

SEC. 5. When property shall have been set apart for the use of the family, in accordance with the provisions of this chapter, if the deceased shall have left a widow and no minor children, such property shall be the property of the widow; and if he shall have left also a minor child or children, one-half to the widow and the remainder to such child, or in equal shares to such children, if there are more than one; if there be no widow, then the whole shall belong to the minor child or children.

When all the estate assigned to widow and children.

SEC. 6. If, on the return of the inventory of any intestate's estate, who died leaving a widow or minor children, it shall appear that the value of the estate does not exceed three hundred dollars, the Probate Court shall, by decree for that purpose, assign for the use and support of the widow and minor children of the intestate, or for the support of the minor child or children, if there be no widow, the whole estate after the payment of the funeral expenses, and expenses of administration; and there shall be no further proceeding in the administration, unless further estate be discovered.

If no widow or child, estate to be assets.

SEC. 7. If intestate leave no widow or minor children, all his estate shall be assets in the hands of the administrator, after payment of funeral expenses, and expenses of administration; for the payment of the debts of the deceased, or to be distributed according to law.

## CHAPTER IV.

### OF CLAIMS AGAINST THE ESTATE.

SEC. 1. When executor to publish notice to creditors to exhibit accounts.
2. Copy of notice, with affidavit of publisher, to be filed.
3. Claims barred, unless presented within one year after publication of notice, unless, &c.
4. Claim presented, to be supported by affidavit; vouchers may be required.
5. Allowance of claim to be indorsed thereon by executor and probate judge.
6. Claims allowed, to be filed, how ranked.
7. Holder, when to bring suit on rejected claim.
8. Claim, barred by Statute of Limitation, not to be allowed.
9. Claim must be presented before action brought.
10. Time of vacancy in administration, not included in limitation.
11. Claims in action against deceased, to be presented.
12. Partial allowance to be indorsed thereon, costs of creditor in case of refusal.
13. Effect of judgment on claim against executor.
14. Judgment against deceased, may be presented without verification: proviso.
15 If claim be doubted, may be submitted to reference.
16. Proceedings on reference; report; judgment, and effect thereof.
17. Claim of executor, how to be presented for allowance to probate judge.
18 Penalty for executors neglecting to give notice for two months after appointment.
19. Return of statement of claims by executor; nature of statement.

Notice to creditors.

SECTION 1. Every executor or administrator shall, immediately after his appointment, cause to be published in some newspaper printed in the county, if there be one, if not, then in such newspaper as may be designated by the court, a notice to the creditors of the deceased, requiring all persons having claims against the deceased, to exhibit them, with the necessary vouchers, within one year after the date of the notice, to such executor or administrator, at the place of his residence or transaction of business, to be specified in the notice. Such notice shall be published as often as the judge of probate shall deem necessary, but not less than once a week for four successive weeks.

Copy of notice, etc., to be filed.

SEC. 2. After the notice shall have been published, a copy thereof, together with an affidavit, attached thereto, of the publisher or printer of the paper in which the same was published, shall be filed by the executor or administrator in the Probate Court.

Claims to be presented within one year; proviso

SEC. 3. If a claim be not presented within one year after the first publication of the notice, it shall be barred: *Provided*, If it be not then due, or if it be contingent, it may be presented within one year from the time it shall become due or absolute.

Claim to be supported by affidavit

SEC. 4. Every claim presented to the administrator shall be supported by the affidavit of the claimant, that the amount is justly due; that no payments have been made thereon; and that there are no off-sets to the same to the knowledge of the claimant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Allowance to be indorsed thereon.

SEC. 5. When a claim, accompanied by the affidavit required in the preceding section, has been presented to the executor or administrator, he shall indorse thereon his allowance or rejection, with the day and date thereof. If he allow the claim, it shall be presented to the probate judge, who shall, in the same manner, indorse on it his allowance or rejection.

Claims allowed to be filed.

SEC. 6. Every claim which has been allowed by the executor or administrator, and the judge of probate, shall be filed in the Probate Court, and be ranked among the acknowledged debts of the estate, to be paid in due course of administration.

Suits on rejected claim

SEC. 7. When a claim is rejected by either the executor, administrator, or the probate judge, the holder shall bring suit in the proper court, against the executor or administrator, within three months after the date of its rejection, if it be then due, or within three months after it becomes due; otherwise the claim shall be forever barred.

Claims barred, not to be allowed.

SEC 8. No claim shall be allowed by the executor, administrator or probate judge, which is barred by the Statute of Limitations.

Must be first presented.

SEC. 9. No holder of any claim against an estate, shall maintain any action thereon, unless the claim shall have been first presented to the executor or administrator.

Vacancy in administration excluded

SEC. 10. The time during which there shall be a vacancy in the administration, shall not be included in any limitations herein prescribed.

Claims in action against deceased to be presented.

SEC. 11. If an action be pending against the testator or intestate at the time of his death, the plaintiff shall, in like manner, present his claim to the executors or administrator, for allowance or rejection, authenticated as in other cases; and no recovery shall be had in the action, unless proof be made of the presentment.

Partial allowance of claim.

SEC. 12. Whenever any claim shall have been presented to any executor or administrator and the probate judge, and a part thereof shall be allowed, the amount of such allowance shall be stated in the indorsement. If the creditor shall refuse to accept the amount so allowed in satisfaction of his claim, he shall recover no costs in any action he may bring against the executor or administrator, unless he shall recover a greater amount than that offered to be allowed.

SEC. 13. The effect of any judgment rendered against any execu-

Effect of judgment against executor.

tor or administrator, upon any claim against the estate of his testator or intestate, shall be only to establish the claim in the same manner as if it had been allowed by the executor or administrator and the probate judge; and the judgment shall be, that the executor or administrator pay, in due course of administration, the amount ascertained to be due. A certified transcript of the judgment shall be filed in the Probate Court; and no execution shall issue upon such judgment, nor shall it create any lien upon the property of the estate, or give the judgment creditor any priority of payment.

Judgment against deceased to be presented.

Proviso.

SEC. 14. When any judgment has been rendered against the testator or intestate in his lifetime, no execution shall issue thereon after his death; but it shall be presented to the executor or administrator as any other claim, but need not be supported by the affidavit of the claimant; and if justly due and unsatisfied, shall be paid in due course of administration: *Provided, however*, That if the execution shall have been levied upon any property of the deceased, the same may be sold for the satisfaction thereof; and the officer making the sale shall account to the executor or administrator for any surplus in his hands.

Reference to settle claims. 16 Wen. 479; 6 Hill. 8-8; 1 Barb. 519.

SEC. 15. If the executor or administrator doubt the correctness of any claim presented to him, he may enter into an agreement in writing, with the claimant, to refer the matter in controversy to some disinterested person, to be approved by the probate judge, upon filing the agreement and approval of the probate judge in the office of the clerk of the District Court for the county in which the letters testamentary or of administration were granted, and the clerk shall, either in term or vacation, enter a rule referring the matter in controversy to the person so selected.

Proceedings. 7 Wen. 522; 10 do. 601.

SEC. 16. The referee shall thereupon proceed to hear and determine the matter, and make his report thereon to the court in which the rule for his appointment shall have been entered. The same proceedings shall be had in all respects, and the referee shall have the same powers, and be entitled to the same compensation, and subject to the same control as if the reference had been made in an action in which such court might by law direct a reference. The court may set aside the referee, and appoint another in his place, or may set aside or confirm the report, and adjudge costs as in actions against executors and administrators; and the judgment of the court thereon shall be as valid and effectual, in all respects, as if the same had been rendered in a suit commenced by the ordinary process.

Claim of executor, how allowed.

SEC. 17. If the executor or administrator is himself a creditor of the testator or intestate, his claim, duly authenticated by affidavits, shall be presented for allowance or rejection to the probate judge, and its allowance by the judge shall be sufficient evidence of its correctness.

Penalty for neglecting to give notice.

SEC. 18. If any executor or administrator shall neglect, for two months after his appointment, to give notice to creditors as prescribed by this chapter, it shall be the duty of the court to revoke his letters.

Return of statement of claims.

SEC. 19. At the same time at which the executor or administrator is required to return his inventory, he shall also return a statement of all claims against the estate, which shall have been presented to him, when required by the court; and, from time to time hereafter, shall present a statement of claims subsequently presented to him; and in all such statements he shall designate the names of the creditors, the nature of each claim, when it did or will become due, and whether it was allowed or rejected by him.

# CHAPTER V.

## SALE OF PROPERTY BY EXECUTORS AND ADMINISTRATORS.

SEC. 1 No sale valid unless made by order of court.
2 Application for order of sale; and objections thereto
3 Application for order of sale by executor, when to be made; notice of sale.
4. Order of sale.
5. Sales of personal property, when and how made.
6. Private sales, when allowed
7. When sale of real estate may be made.
8 Proceedings to obtain order for such sale.
9 When probate judge to grant order to show cause.
10 Order, how and when to be served or published.
11. When judge of probate to hear proof and allegation of parties.
12. Copy of order to be served on guardian; appointment of guardian.
13. Examination of witnesses
14. When all of real estate may be sold.
15. Order of sale.
16 Order, what to specify.
17 When others than executors may apply for order of sale.
18. Copy of order in such case to be delivered to executor.
19. Notice of sale, how given and what to contain.
20. Sale, when and where to be made; when and how long executors may postpone sale.
21. Notice of adjournment, how given.
22 If on credit, executor to take certain security.
23. Proceedings to be returned; when sale may be vacated.
24. Who may object to confirmation of sale, and how.
25. When order confirming sale and directing conveyances to be made.
26. Contents of conveyance, and effect thereof.
27. Order of confirmation, when given, and what to state
28. Order for sale of incumbered real estate, how obtained.
29 Estate of testator to be disposed of according to will.
30. Proceedings by executor if sale be directed by will.
31. Further sale to be made, if appropriation be insufficient.
32. Estate of legatees liable for debts, &c
33. Contributions among legatees, when estate of legatee has been sold.
34 & 35 Interests of deceased in contract for purchase of lands, how to be sold.
36 Bond required of purchaser
37. Executor when to assign such contract to purchaser; rights of purchaser.
38. When executor may be ordered to redeem mortgaged property.
39 Order of sale, instead of redemption.
40. Liability of executor for neglect relative to sales.
41. Ib. In case of fraudulent sales
42. Action for recovery of estate sold by executor, when to be brought.
43 Preceding section not to apply to person under disability to sue.
44. Executor to return to Probate Court a verified account of sales.
45. Executor or administrator not to purchase.

Sale must be by order

SECTION 1. No sale of any property of an estate shall be valid, unless made under order of the Probate Court.

Application for order of sale.

SEC. 2. All applications for orders of sale shall be by petition in writing, in which shall be set forth the facts showing the sale to be necessary; and, upon the hearing, any person interested in the estate may file his written objections, which shall be heard and determined.

Ib. Perishable property; sale to satisfy claims; notice.

SEC. 3. At a term of the court at which the inventory is returned, the executor or administrator shall apply for an order to sell the perishable property of the estate, and so much other property as may be necessary to be sold to pay the allowance made to the family of the deceased. If claims against the estate have been allowed, and a sale of property shall be necessary for their payment, or of the expenses of the administration, he shall also apply for an order to sell so much of the personal estate as shall be necessary. He shall make a similar application, giving at least two weeks' previous notice in a newspaper in general circulation in the county where letters were granted, or by posting written or printed notices thereof, in ten of the most public places in the county from time to time, so long as any personal property remains in his hands, and a sale is necessary to pay any demands against the estate.

Order of sale.

SEC. 4. If it appear to the court that a sale is necessary, it shall so order. In making such sale, the court shall order such articles as are not necessary for the support and subsistence of the family of the deceased, or not specially bequeathed, to be first sold.

Sales of personal property.

SEC. 5. Sales of personal property shall be made at public auction, and after notice given for at least two weeks—which notice shall be given by notices posted in the public places in the county, or by publication in a newspaper, if the judge shall so order, in which shall be stated the time and place of sale.

Private sale.

SEC. 6. If it be made to appear, to the satisfaction of the Probate Court, that it will be for the interest of the estate to allow the executor or administrator to sell some portion or the whole of the personal estate at private sale, the court may so order.

Real estate.

SEC. 7. When the personal estate in the hands of the executor or administrator shall be insufficient to pay the allowance to the family, and all the debts and charges of the administration, the executor or administrator may sell the real estate for that purpose, upon the order of the judge of probate.

Order, how obtained.

SEC. 8. To obtain such order, he shall present a petition to the Probate Court, setting forth the amount of the personal estate that has come to his hands, and how much, if any, remains undisposed of; a list, and the amounts of the debts outstanding against the deceased, as far as the same can be ascertained; a description of all the real estate of which the testator or intestate died seised; the condition and value of the respective lots and portions; the names and ages of the devisees, if any, and of the heirs of the deceased: which petition shall be verified by the oath of the party presenting the same.

Order to show cause.

SEC. 9. If it shall appear, by such petition, that there is not sufficient personal estate in the hands of the executor or administrator to pay the allowance to the family, the debts outstanding against the deceased, and the expenses of administration, and that it is necessary to sell the whole, or some portion, of the real estate for the payment of such debts, the probate judge shall thereupon make an order, directing all persons interested to appear before him at a time and place specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why an order should not be granted to the executor or administrator to sell so much of the real estate of the deceased as shall be requisite to pay such allowance, charges and debts.

Ib. How served; proviso.

SEC. 10. A copy of such order to show cause, shall be personally served on all persons interested in the estate, at least ten days before the time appointed for hearing the petition, or shall be published at least four successive weeks in such newspaper as the court shall order: *Provided, however*, If all persons interested in the estate shall signify in writing their assent to such sale, the notice may be dispensed with.

Hearing petition, &c.

SEC. 11. The probate judge, at the time and place appointed in such order, or at such other time to which the hearing may be adjourned, upon proof of the due service or publication of a copy of the order, or upon filing the consent, in writing, to such sale, of all parties interested, shall proceed to the hearing of such petition; and if such consent be not filed, shall hear and examine the allegations and proofs of the petitioners, and of all persons interested in the estate who may oppose the application.

Copy of order to be served on guardian.

SEC. 12. If any of the devisees or heirs of the deceased are minors, and have a general guardian in the county, the copy of the order shall be served on the guardian; if they have no such guardian, the court shall, before proceeding to act upon the petition, appoint some disinterested person their guardian for the sole purpose of appearing for them, and taking care of their interests in the proceedings.

Witnesses.

SEC. 13. The executor or administrator may be examined under oath, and witnesses may be examined by either party, and process to compel their attendance and testimony may be issued by the probate judge in the same manner, and with like effect, as in other causes.

Sale 10 Wen. 441.

SEC. 14. If it shall appear to the court that it is necessary to sell a part of the real estate, and that, by a sale of such part, the residue of the estate, or some specific part or piece thereof, would be greatly injured, the court may authorize the sale of the whole estate, or of such part thereof as may be adjudged necessary, and most for the interest of all concerned.

Order to sell.

SEC. 15. If the probate judge shall be satisfied, after a full hearing upon the petition, and on examination of the proofs and allegations of the parties interested, that a sale of the whole, or some portion of the real estate, is necessary for the payment of the allowance to the family, and all valid claims against the estate, and charges of administration, or if such sale be assented to by all the persons interested, he shall make an order of sale authorizing the executor or administrator to sell the whole or so much and such parts of the real estate described in the petition, as he shall judge necessary or beneficial.

Order to sell, what to contain.

SEC. 16. The order shall specify the lands to be sold, and the terms of sale, which may be either for cash or on credit, not exceeding six months, as the court may direct. If it appear that any part of such real estate has been devised, and not charged in such devise with the payment of debts, the court shall order that part descended to heirs to be sold before that so devised.

When other than executors may apply for order of sale.

SEC. 17. If the executor or administrator shall neglect to apply for an order of sale whenever it may be necessary, any person interested in the estate may make application therefor in the same manner as the executor or administrator, and notice thereof shall be given to the executor or administrator before the hearing.

Copy of order to executor.

SEC. 18. Upon making such order, a certified copy thereof shall be delivered by the probate judge to the executor or administrator, who shall be thereupon authorized to sell the real estate as directed.

Notice of sale.

SEC. 19. When a sale is ordered, notice of the time and place of sale shall be posted in ten of the most public places in the county where the land is situated, at least twenty days before the day of sale, and shall be published in some newspaper in this territory in general circulation in said county, for three successive weeks next before such sale, in which notice the lands and tenements shall be described with common certainty.

Sale.

SEC. 20. Such sale shall be in the county where the lands are situated, at public auction, between the hours of ten o'clock in the morning, and the setting of the sun, the same day; but if the executor or administrator shall deem it for the interest of all concerned that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days.

Adjournment of sale.

Notice of.

SEC. 21. In case of such adjournment, notice thereof shall be given by a public proclamation at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice shall be given by posting or publishing as the time and circumstances may admit.

If on credit.

SEC. 22. The executor or administrator shall, when the sale is on credit, take the note or notes of the purchaser for the purchase-money, with a mortgage on the property to secure their payment.

When sale may be vacated. 18 Wen. 469, 8 Comst. 303.

SEC. 23. The executor or administrator making any sale of real estate shall, at the next term of the court thereafter, make a return of his proceedings to the probate judge, who shall examine the same, and if he shall be of opinion that the proceedings were unfair, or that the sum bidden is disproportionate to the value, and that a sum exceeding such bid at least ten per cent., exclusive of expenses of a new sale, may be obtained, he shall vacate such sale, and order another to be had, of which notice shall be given; and the sale shall be conducted in all respects as if no previous sale had taken place.

Who may object to confirmation

SEC. 24. When the return of the sale is made, any person interested in the estate may file written objections to the confirmation of the sale; and may be heard, and produce witnesses in support of his objections.

When to be confirmed. 3 Comst. 303; 10 Paige, 602.

SEC. 25. If it appear to the court that the sale was legally made and fairly conducted, and that the sum bidden was not disproportionate to the value of the property sold, or if disproportionate, that a greater sum as above specified, cannot be obtained, the court shall make an order confirming the sale, and directing conveyances to be executed; and such sale, from that time, shall be confirmed and valid.

Conveyances. 3 Barb 342; 4 do. 189; 3 Barb Ch 611; 2 Comst. 245.

SEC. 26. Such conveyances shall thereupon be executed to the purchaser by the executor or administrator; they shall contain and set forth at large the original order authorizing a sale, and the order confirming the same and directing the conveyances, and they shall be deemed to convey all the estate, rights and interest of the testator or intestate in the premises at the time of his death.

Order confirming, when given.

SEC. 27. Before any order is entered confirming the sale, it shall be proven to the satisfaction of the probate judge, that notice of the sale was given as herein prescribed, and the order of confirmation shall state that such proof was made.

Sale of incumbered estates.

SEC. 28. When a testator shall have given any legacy by will that is effectual to charge real estate, and his goods, chattels, rights and credits shall be insufficient to pay such legacy, together with his debts and charges of administration, the executor or administrator with the will annexed, may obtain an order to sell his real estate for that purpose in the same manner, and upon the same terms and conditions as are prescribed in this chapter, in case of a sale for the payment of debts.

Estates appropriated.

SEC. 29. If the testator shall make provision by his will, or designate the estate to be appropriated for the payment of his debts, the expenses of administration or family expenses, they shall be paid according to the provisions of the will, and out of the estate thus appropriated, so far as the same may be sufficient.

Ib.

SEC. 30. When such provision has been made, or any property directed by the will to be sold, the executor or administrator with the will annexed, may proceed to sell without the order of the Probate Court; but he shall be bound, as an administrator, to give notice of the sale, and return accounts thereof to the court, and to proceed, in making the sale, in all respects as if it were made under the order of the court, unless there are special directions given in the will, in which case he shall be governed by such directions.

If appropriation be insufficient.

SEC. 31. If the provision made by the will, or the estate appropriated be not sufficient to pay the debts and expenses of administration and family expenses, such part of the estate as shall not have been disposed of by the will, if any, shall be appropriated for that purpose according to the provisions of this act.

Estates to legatees liable for debts, etc.

SEC. 32. The estate, real and personal, given by the will to any legatees or devisees, shall be held liable for the payment of the debts, the expenses of administration and of the family, in proportion to the value or amount of the several devises or legacies; except that specific devises or legacies may be exempted, if it shall appear to the court necessary to carry into effect the intention of the testator, if there shall be other sufficient estate.

Contribution etc.

SEC. 33. When the estate given by any will has been sold for the payment of debts and expenses, all the devisees and legatees shall be liable to contribute according to their respective interests, to any devisee or legatee from whom the estate devised to him may have been taken for the payment of the debts or expenses; and the Probate Court, when distribution is made, shall, by decree for that purpose, settle the amount of the several liabilities, and decree how much each person shall contribute.

Contract of lands to be sold.

SEC. 34. If a deceased person, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land, and under such contracts, may be sold on the application of his executor or administrator, in the same manner as if he had died seized of such lands; and the same proceedings may be had for that purpose, as are prescribed in this chapter in respect to lands of which he died seized, except as hereinafter provided.

Ib

SEC. 35. Such sale shall be made subject to all payments that may thereafter become due on such contracts, and if there be any such payments thereafter to become due, such sale shall not be confirmed by the probate judge, until the purchaser shall have executed a bond to the executor or administrator for his benefit and indemnity, and for the benefit and indemnity of the persons entitled to the interest of the deceased, in the lands so contracted for, in double the whole amount of the payments thereafter to become due on such contract, with such securities as the probate judge shall approve.

Bond of purchaser.

SEC. 36. Such bond shall be conditioned that the purchaser will make all payments for such land as shall become due after the date of such sale, and will fully indemnify the executor or administrator, and the persons so entitled, against all demands, costs and charges, and expenses by reason of any covenant or agreement contained in such contract; but if there be no payments thereafter to become due on such contract, no bond shall be required of the purchaser.

Assignment of contract to purchaser.

SEC. 37. Upon the confirmation of such sale, the executor or administrator shall execute to the purchaser an assignment of the contract, which assignment shall vest in the purchaser, his heirs and assigns, all the right, title and interest of the persons entitled to the interests of the deceased in the lands sold at the time of the sale, and such purchaser shall have the same rights and remedies against the vendor of such lands, as the deceased would have had if he were living.

Redemption by executor.

SEC. 38. If any person die, having mortgaged any real or personal estate, and shall not have devised the same, or provided for the redemption thereof by will, the Probate Court, upon the application of any person interested, may order the executor or administrator to redeem such estate out of the personal assets, if it should appear to the satisfaction of the court that such redemption would be beneficial to the estate, and not injurious to creditors.

Sale instead of redemption.

SEC. 39. If such redemption be not deemed expedient, the court shall order such property to be sold at public sale, which sale shall be with the same notice, and conducted in the same manner as is required in other cases of sales of real estate provided for in this chapter; and the executor or administrator shall execute a conveyance thereof to the purchaser, which conveyance shall be effectual to convey to the purchaser all the right, title and interest which the deceased would have had in the property, had not the same been mortgaged by him; and the purchase money, after paying the expenses of sale, shall first be applied to the payment and discharge of such mortgage, and the residue in due course of administration.

Executor liable for neglect

SEC. 40. If there shall be any neglect or misconduct in the proceedings of the executor or adminstrator in relation to any sale, by which any person interested in the estate shall suffer damages, the party aggrieved may recover the same in a suit upon the bond of the executor or administrator, or otherwise, as the case may require.

Ib Fraudulent sales. 2 Barb. Ch. 87.

SEC. 41. Any executor or administrator who shall fraudulently sell any real estate of his testator or intestate, contrary to the provisions of this chapter, shall be liable in double the value of the land sold, as damages to be recovered in an action by the person or persons having an estate of inheritance therein.

Certain actions when to be brought.

SEC. 42. No action for the recovery of any estate sold by any executor under the provisions of this chapter, shall be maintained by any person, claiming under the testator or intestate, unless it be commenced within three years next after the sale.

Exceptions to prior section.

SEC. 43. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such action at any time within three years after the removal of the disability.

Account of sale.

SEC. 44. Whenever a sale shall have been made, by an executor or administrator, of any property of the estate, real or personal, it shall be his duty to return to the Probate Court, at its next term thereafter, an account of sales verified by his affidavit.

Executor, etc., not to purchase.

SEC. 45. No executor or administrator shall, directly or indirectly, purchase any property of the estate.

# CHAPTER VI.

## OF THE POWERS AND DUTIES OF THE EXECUTOR AND ADMINISTRATOR, AND OF THE MANAGEMENT OF THE ESTATE.

SEC 1. Duty of executor
2, 3, 4 & 5. Actions by and against executors and administrators
6. When executor may, with consent of probate judge, compound with creditors.
7. Fraudulent conveyances by deceased may be voided by executor
8. But not bound to do so unless on application and security for costs given.
9. Sale and distribution of proceeds of such estate recovered.

Duties of.

SECTION 1. The executor or administrator shall take into his possession all the estate of the deceased, real and personal, and collect all debts due to the deceased.

Actions by and against. 5 Wen. 318; 8 do. 580; 4 Hill, 492.

SEC. 2. Actions for the recovery of any property, real or personal, or for the possession, and all actions founded upon contracts, may be maintained by and against executors and administrators, in all cases in which the same might have been maintained by or against their respective testators or intestates.

Ib. 5 Cow. 267.

SEC. 3. Executors and administrators may maintain actions against any person who shall have wasted, destroyed, taken, carried away or converted to his own use, the goods of their testator or intestate in his lifetime; also may maintain actions for trespass committed on the real estate of the deceased in his lifetime.

Ib.

SEC. 4. Any person or his personal representatives shall have an action against the executor or administrator of any testator or intestate, who, in his lifetime, shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of such person.

Ib.

SEC. 5. Any administrator may, in his own name, for the use and benefit of all parties interested in the estate, maintain actions on the bond of an executor, or of any former administrator of the same estate.

Compounding with creditors.

SEC. 6. Whenever a debtor of a deceased person shall be unable to pay all his debts, the executor or administrator may, with the approbation of the probate judge, compound with him, and give him a dicharge upon receiving a fair and just dividend of his effects.

Fraudulent conveyances by deceased, may be avoided by executors.

SEC. 7. When there shall be a deficiency of assets in the hands of an executor or administrator; and when the deceased shall, in his lifetime, have conveyed any real estate, or any right or interest therein, with intent to defraud his creditors, or to avoid any right, debt, or duty of any person; or shall have so conveyed such estate, that by law the deeds or conveyances are void as against creditors, the executor or administrator may, and it shall be his duty to commence, and prosecute to final judgment, any proper action for the recovery of the same; and may recover for the benefit of the creditors all such real estate so fraudulently conveyed; and may also, for the benefit of the creditors, sue and recover all goods, chattels, rights and credits which may have been so fraudulently conveyed by the deceased in his lifetime, whatever may have been the manner of such fraudulent conveyance.

Ib

SEC. 82. No executor or administrator shall be bound to sue for such estate, as mentioned in the preceding section, for the benefit of the creditors, unless on application of the creditors of the deceased; nor unless the creditors making such application shall pay such part of the costs and expenses, or give such security to the executor or administrator thereof, as the probate judge shall direct.

Ib. Sale and distribution of proceeds thereof.

SEC. 9. The real estate so recovered shall be sold for the payment of debts, in the same manner as if the deceased had died seised thereof, upon obtaining an order therefor from the Probate Court; and the proceeds of all goods, chattels, rights and credits so recovered, shall be appropriated in payment of the debts of the deceased, in the same manner as other property in the hands of the executor or administrator.

# CHAPTER VII.

## OF THE CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS IN CERTAIN CASES.

SEC. 1. When court may decree conveyance by executor.
2 Petition for specific performance, and proceedings thereon.
3 Hearing of petition.
4. Decree for conveyance, when to be made.
5. Appeal from decree, executing conveyance, &c.
6. When petition to be dismissed without prejudice.
7 Effect of such conveyance.
8. Certified copy of decree may be recorded; effect thereof.
9 Decree so recorded may be enforced by other process
10 In case of death of person entitled, his heirs, &c., may commence or prosecute proceedings, &c.

Contracts of deceased to convey.

SECTION 1. When any person, who is bound by contract in writing to convey any real estate, shall die before making the conveyance, the Probate Court may make a decree, authorizing and directing the executor or administrator to convey such real estate to the person entitled thereto, in all cases where such deceased person, if living, might be compelled to make such conveyance.

Petition to enforce such contract.

SEC. 2. On presentation of a petition of any person claiming to be entitled to such conveyance from any executor or administrator, setting forth the facts upon which such claim is predicated, the probate judge shall appoint a time and place for hearing such petition, which shall be at a regular term of the court, and shall order notice of the pending thereof, and the time and place of hearing, to be published at least four successive weeks next before such hearing, in such newspaper in this territory as the court shall designate.

Hearing of petition

SEC. 3. At the time and place appointed for such hearing, or at such other time as the same may be adjourned to, upon proof by affidavit of the due publication of the notice, the court shall proceed to a hearing, and all persons interested in the estate may appear and defend such petition, by filing their objections in writing, and the court may examine, on oath, the petitioner, and all who may be produced before him for that purpose.

Decree for conveyance.

SEC. 4. After a full hearing upon such petition and objections, and examination of the facts and circumstances of the claim, if the probate judge is satisfied that the petitioner is entitled to a conveyance of the real estate described in his petition, he shall make a decree, authorizing and directing the executor or administrator to execute a conveyance thereof to the petitioner.

Appeal

SEC. 5. Any person interested may appeal from such decree to the District Court for the same county, as in other cases; but if no appeal be taken from such decree within the time limited therefor by law, or if such decree be confirmed on appeal, it shall be the duty of the executor or administrator to execute the conveyance according to the directions contained in the decree, and a certified copy thereof shall be recorded with the deed in the office of the recorder of the county where the lands lie, and shall be evidence of the correctness of the proceedings, and of the authority of the executor or administrator to make the conveyance.

Dismissal without prejudice.

SEC. 6. If, upon a hearing in the Probate Court, as hereinbefore provided, the probate judge shall doubt the right of the petitioner to have a specific performance of the contract, he shall dismiss the petition without prejudice to the rights of the petitioner, who may, at any time within six months thereafter, proceed in to the District Court to enforce a specific performance.

Effect of conveyance.

SEC. 7. Every conveyance made in pursuance of a decree of the Probate Court, as provided in this chapter, shall be effectual to pass the estate contracted for, as fully as if the contracting party himself were still living, and then executed the conveyance.

Effect of copy of decree recorded.

SEC. 8. A copy of the decree for the conveyance made by the Probate Court, and duly certified and recorded in the office of the recorder for the county where the lands lie, shall give the person, entitled to the conveyance, a right to the possession of the lands contracted for, and of holding the same according to the terms of the intended conveyance, in like manner as if they had been conveyed in pursuance of the decree.

Enforcing decree.

SEC. 9. The recording of any decree as provided in the preceding section, shall not prevent the court making such decree, from enforcing the same by other process.

When representative entitled to conveyance.

SEC. 10. If the person to whom the conveyance was to be made, shall die before the commencement of the proceeding, according to the provisions of this chapter, or before the completion of the conveyance, any person who would have been entitled to the estate under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, or the executor or administrator of such deceased person for the benefit of the person entitled, may commence such proceedings, or prosecute the same if already commenced; and the conveyance shall be so made as to vest the estate in the same persons who would have been entitled to it, or in the executor or administrator for their benefit.

## CHAPTER VIII.

### OF ACCOUNTS TO BE RENDERED BY EXECUTORS AND ADMINISTRATORS, AND OF THE PAYMENT OF DEBTS

SEC. 1. Executors, &c., not to be liable on certain promises, unless in writing.
2. How chargeable with all estate reduced by them to possession.
3. Not to profit by increase, or lose by decrease or destruction without his fault.
4. When not responsible for debts due deceased.
5. Compensation, &c., to executors and administrators.
6. Executor not to purchase claim against estate.
7. Commissions allowed executor.
8. Executor, when to render exhibit to court: exhibit, what to set forth.
9. Citation to issue if exhibit not rendered
10. Petition before final settlement to compel executor to render exhibit.

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SEC. 11. Citation to render exhibit, when to issue.
12. Objection to exhibit, how made, and trial thereof.
13 Attachment may issue against executor, if exhibit be not rendered after citation.
14. Account of executor to be rendered one year from appointment.
15. Citation to account at instance of successor.
16. Letters of executor, when to be revoked
17. In rendering account, executor to produce vouchers
18. When and what allowance may be allowed without vouchers.
19. Notice of settlement of account, how given and what to contain.
20 Any persons interested in estate may file exceptions to the account.
21. Appointment of guardian to examine accounts
22 Examination, how conducted.
23. Allowance of account conclusive, except on minors.
24. Account not to be allowed unless proof of notice be given.
25. Order of payment of debts.
26 How far mortgage preferred to other debts
27. Proceedings when estate insufficient to pay all debts.
28. Funeral expenses, &c, to be paid as soon as executor has funds
29. Order for payment, on settlement of accounts.
30. Debts not due or disputed, how provided for
31. Liability of executor to creditor after order of payment.
32. After settlement of executor's accounts, &c., creditor cannot call on other creditors, legatees, &c, to contribute; but executor liable if notice be not given.
33. Legacies, when to be paid; estate, when to be distributed.
34. Executor, &c., when to pray a settlement.
35 Proceeding against executor, if he neglect to render account.

Liability of executors, &c., on promises

SECTION 1. No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, is in writing, and signed by such executor or administrator, or by some other person, by him thereunto specially authorized.

Chargeable with estate of deceased.

SEC. 2. Every executor or administrator shall be chargeable, in his account, with the whole estate of the deceased which may come into his possession, at the value of the appraisement contained in the inventory, except as provided in the following sections, and with all the interest, profit and income of the estate.

Increase and decrease of property.

SEC. 3. He shall not make profit by the increase, nor suffer loss by the decrease or destruction, without his fault, of any part of the estate. He shall account for the excess when he shall have sold any part of the estate for more than the appraisement; and if any shall be sold for less than the appraisement, he shall not be responsible for the loss if the sale has been justly made.

Uncollected debts.

SEC. 4. No executor or administrator shall be accountable for any debts due the estate, if it shall appear that they remain uncollected without his fault.

Compensation.

SEC. 5. He shall be allowed all necessary expenses in the care, management and settlement of the estate, and for his services, such fees as the law provides; but when the deceased, by his will, shall have made some other provision for the compensation of his executor, that shall be deemed a full compensation for his services, unless he shall, by a written instrument filed in the Probate Court, renounce all claim for compensation provided by the will.

Not to purchase claims, &c.

SEC. 6. No administrator or executor shall purchase any claim against the estate he represents; and if he shall have paid any

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Commission. SEC. 7. When no compensation shall have been provided by will, or the executor shall renounce his claim thereto, he shall be allowed commission upon the whole estate accounted for by him as follows: for the first thousand dollars, at the rate of seven per cent.; for all above that sum and not exceeding two thousand dollars, at the rate of five per cent.; for all above that sum at the rate of four per cent.; and the same commission shall be allowed to administrators. In all cases, such further allowance may be made as the probate judge shall deem just and reasonable, for any extraordinary services not required of an executor or administrator in the common course of his duty: *Provided*, That the total amount of such allowance shall not exceed the amount of commission allowed by this section.

Petition for exhibit. SEC. 8. Within six months after his appointment, and thereafter at any time when required by the court, either upon its own motion, or the application of any person interested in the estate, the executor or administrator shall render, for the information of the court, an exhibit under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs.

Ib. Failing to render. SEC. 9. If the executor or administrator fail to render an exhibit within six months, as required in the last preceding section, it shall be the duty of the probate judge to issue a citation, requiring him to appear and render it.

Petition for exhibit SEC. 10. Any person interested in the estate, may, at any time before the final settlement of accounts, present his petition to the probate judge, praying that the executor or administrator be required to appear and render such exhibit, setting forth the facts showing that it is necessary and proper that such an exhibit should be made.

Citation to render exhibit. SEC. 11. If the probate judge be satisfied, either from the oath of the applicant, or from any other testimony that may be offered, that the facts alleged are true, and shall consider the showing of the applicant sufficient, he shall issue a citation to the executor or administrator, requiring him to appear on some day named in the citation, which shall be during the term of the court, and render an exhibit as prayed for.

Objections to exhibit. SEC. 12. When an exhibit is rendered by an executor or administrator, any person interested may appear and, by objections in writing, contest any account or statement therein contained. The court may examine the executor or administrator, and if he have been guilty of negligence, or wasted, embezzled or mismanaged the estate, his letters shall be revoked.

Attachment. SEC. 13. If any executor or administrator neglect or refuse to appear and render an exhibit after having been duly cited, an attachment may be issued against, or his letters may be revoked, in the discretion of the court.

Account to be rendered one year from appointment.

SEC. 14. Every executor or administrator shall render a full account of his administration, at the expiration of one year from the time of his appointment. If he fail to present his account, it shall be the duty of the judge to compel the rendering of such account by attachment; and any person interested in the estate, may apply for and obtain an attachment; but no attachment shall issue, unless a citation shall have been first issued and returned, requiring the executor or administrator to appear and show cause why an attachment should not issue.

Citation to account at instance of successor.

SEC. 15. Whenever the authority of an executor or administrator shall cease or be revoked for any reason, he may be cited to account before the Probate Court, at the instance of the person succeeding to the administration of the same estate, in like manner as he might have been cited by any person interested in the estate, during the time he was executor or administrator.

Revokement of letters, etc.

SEC. 16. If the executor or administrator resides without the county, absconds, or conceals himself, so that citation cannot be personally served, and shall neglect to render an account within thirty days after the time above prescribed, or if he shall neglect to render an account within thirty days after having been committed, when the attachment has been executed, his letters shall be revoked.

Vouchers of expenses

SEC. 17. In rendering his account, the executor or administrator shall produce vouchers for all expenses and charges which he shall have paid, which vouchers shall be filed and remain in court; and he may be examined on oath touching such payments, and also touching any property and effects of the deceased, and the disposition thereof.

Allowance without vouchers.

SEC. 18. On the settlement of his account, he may be allowed any item of expenditure, not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own oath, positive to the fact of payment, specifying when, where, and to whom payment was made, if such oath be uncontradicted; but such allowances in the whole shall not exceed five hundred dollars, for payment in behalf of any one estate.

Notice of settlement.

SEC. 19. When the account is rendered for settlement, notice thereof shall be given by the probate judge, by causing notices to be posted in three of the most public places in the county. The notice shall set forth the name of the estate, of the executor or administrator, and the day appointed for the settlement of accounts, which shall be on some day of a term of court.

Exceptions to account.

SEC. 20. On the day appointed, or on any subsequent day to which the hearing may have been adjourned by the court, any person interested in the estate may appear and file his exceptions, in writing, to the account, and contest the same.

Guardian for minor.

SEC. 21. If there be any minor interested in the estate, who has no legally appointed guardian, the court shall appoint some disinterested person to represent him, who, on behalf of the minor, may contest the account as any other person interested might contest it; and who shall be allowed by the court a reasonable compensation for his services.

CHAP. 8

Examination of accounts

SEC. 22. The hearing and allegations of the respective parties may be adjourned from time to time, as shall be necessary, and the court may appoint one or more auditors to examine the accounts and make report thereon subject to confirmation, and may allow a reasonable compensation to such auditors, to be paid out of the estate of the deceased.

Allowance of account.

SEC. 23. The settlement of the account and the allowance thereof by the court, or upon appeal, shall be conclusive against all persons in any way interested in the estate; saving, however, to all persons laboring under any legal disability, their rights to proceed against the executor or administrator, either individually or upon his bond, within two years after their respective disabilities shall have ceased; and in any action brought by any such person, the allowance and settlement of the account shall be deemed presumptive evidence of its correctness.

Ib.

SEC. 24. The account shall not be allowed by the court, until it be first proven that notice has been given as required by this chapter; and the decree shall show that such proof was made to the satisfaction of the court, and shall be conclusive evidence of the fact.

Order of payment of debts.

SEC. 25. The debts of the estate shall be paid in the following order:

1. Funeral expenses;
2. Expenses of the last sickness;
3. Debts having preference by the laws of the United States;
4. Public rates, taxes and excise duties due the territory;
5. Judgments rendered against the deceased in his lifetime, on which execution might have issued at the time of his death, and mortgages, in the order of the date of their filing in the recorder's office;
6. All other demands against the estate.

Preference to mortgage qualified.

SEC. 26. The preference given in the preceding section to a mortgage, shall only extend to the proceeds of property mortgaged; if the proceeds of such property be insufficient to pay the mortgage, the part remaining unsatisfied shall be classed with other demands against the estate.

When estate is insufficient to pay debts.

SEC. 27. If the estate be insufficient to pay all the debts of any one class, each creditor shall be paid a dividend in proportion to his claim; and no creditor of any one class shall receive any payment, until all those of the preceding class shall have been fully paid.

Funeral, &c., expenses.

SEC. 28. It shall be the duty of the executor or administrator, as soon as he may have sufficient funds in his hands, to pay the funeral expenses and expenses of the last sickness, and the allowance made to the family of the deceased; and he may retain in his hands the necessary expenses of administration; but he shall not be obliged to pay any other debt, or any legacy, until, as prescribed by this act, the payment has been ordered by the court.

Order for payment.

SEC. 29. Upon the settlement of the accounts of the executor or administrator at the end of the year, as required in this act, the court shall make an order for the payment of the debts, as the circumstances of the estate shall require; if there be not sufficient funds in the hands of the executor or administrator, the court shall specify in the decree the sum to be paid each creditor.

Debts not due or disputed.

SEC. 30. If there be any claim not due, or any contingent or disputed claim against the estate, the amount thereof, or such part thereof as the holder would be entitled to if the claim were due, established or absolute, shall be paid into the court, where it shall remain, to be paid over to the party when he shall become entitled thereto; or, if he fail to establish his claim, to be paid over or distributed as the circumstances of the case may require: *Provided*, That if any creditor whose claim has been allowed, but is not yet due, shall appear and assent to a deduction therefrom of the legal interest for the time the claim has yet to run, he shall be entitled to be paid accordingly.

Liability of executor after order.

SEC. 31. Whenever a decree shall have been made by the Probate Court for the payment of creditors, the executor or administrator shall be personally liable to each creditor for his claim, or the dividend thereon; and execution may be issued on such decree, as upon a judgment in the District Court, in favor of each creditor, and the same proceedings may be had under such execution as if it had been issued from the District Court. The executor or administrator shall also be liable on his bond to each creditor.

Creditors, when not liable to contribute, but executor liable if no notice given.

SEC. 32. When the accounts of the executor or administrator have been settled, and an order made for the payment of debts and distribution of the estate, no creditor, whose claim was not included in the order for payment, shall have any right to call upon the creditors who have been paid, or upon the heirs, legatees or devisees, to contribute for the payment of his claim; but if the executor or administrator shall have failed to give the notice to creditors, as prescribed by this act, such creditor may recover, on the bond of the executor or administrator, the amount of his claim, or such part thereof as he would have been entitled to had it been allowed: *Provided*, That this section shall not apply to any creditor whose claim was not due ten months before the day of settlement, or whose claim was contingent, and did not become absolute ten months before such day.

Estate when to be distributed.

SEC. 33. If all the debts shall have been paid by the first distribution, the court shall proceed to direct the payment of legacies, and the distribution of the estate among the heirs, legatees, or other persons entitled; but if there be debts remaining unpaid, the court shall give such extension of time as may be reasonable for the final settlement of the estate.

When executor to pray a final settlement.

SEC. 34. At the time designated, or sooner, if within that time all the property of the estate shall have been sold, or there shall be sufficient funds in his hands to pay all the debts due by the estate, the executor or administrator shall render a final account, and pray a settlement of his administration.

Proceedings if executor neglect to render account.

SEC. 35. If he neglect to render his account, the same proceedings may be had as are prescribed in this chapter, in regard to first account to be rendered by him, and all the provisions of this chapter relative to the last mentioned account, and the notice and settlement thereof, shall apply to his account presented for final settlement.

# CHAPTER IX.

## OF THE PARTITION AND DISTRIBUTION OF THE ESTATE.

SEC. 1. When legatees, &c., may petition court for legacy.
2. Notice of such application to be given all persons interested.
3. As to those who may oppose application.
4. Application when allowed, and on what terms.
5. Such decree may order executor to deliver legacy.
6 Proceedings in case partition be necessary.
7. Costs of proceedings to be paid by applicant.
8. Petition by executor for order, requiring payment of money secured; when court to grant order, nature thereof.
9. Distribution of proceeds.
10 & 11. Decree of distribution, what to contain, and when made.
12. Partition of undivided shares.
13. Proceedings when real estate lies in different counties.
14. Notice of application for partition.
15. Partition when shares have been conveyed.
16. Shares how set out
17. When estates cannot be divided, court may assign the whole to one of parties.
18. When tract of greater value than either party's share, and cannot be divided, may be set off to one of the parties.
19. When estate to be sold if partition impracticable.
20. Testator's estate in common to be first severed.
21. Guardians to be appointed for minors, &c., and agents for non-residents
22. Report of commissioners and proceedings thereon.
23. When partition may be dispensed with.
24. Questions relating to advancement how determined.
25 .When court may appoint agent to take charge of estate for non-resident.
26. Agent to give bond, and court may allow for his services.
27. Unclaimed estate to be sold: agent to take duplicate receipts from treasurer.
28. Liability of agent.
29 Claim of proceeds by absentee; when court to give certificate; payment by auditor.
30. When court to discharge executor from future liability.
31. When letters of administration granted after final settlement.

Petition for legacies, &c.

SECTION 1. At any time after six months after the time of issuing letters testamentary or of administration, any heir, legatee or devisee may present his petition to the court, that the legacy or share of the estate to which he is entitled, may be given to him upon his giving bonds with security for the payment of his proportion of the debts of the estate.

Notice of application, to whom given.

SEC. 2. Notice of the application shall be given to the executor or administrator, and to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of the executor or administrator.

Opposing application.

SEC. 3. The executor, administrator, or any person interested in the estate, may appear and resist the application; or any other heir, legatee or devisee, may make a similar application for himself.

Allowance of application; proviso.

SEC. 4. If, on the hearing, it appear to the court that the estate is but little in debt, and that the share of the party or parties applying may be allowed, without injury to the creditors of the estate, the court shall make a decree in conformity with the prayer of the applicant or applicants: *Provided*, Each one of them shall first execute and deliver to the executor or administrator a bond, in such sum as shall be designated by the probate judge, and with sureties to be approved by him, payable to the executor or administrator; conditioned for the payment by the devisee or legatee whenever required, of his proportion of the debts due from the estate.

Order to deliver legacy.

SEC. 5. Such decree may order the executor or administrator to deliver to the heir, devisee or legatee, the whole portion of the estate to which he may be entitled, or only a part thereof.

Partition.

SEC. 6. If, in the execution of such decree, any partition be necessary between two or more of the parties interested, it shall be made in the manner hereinafter prescribed.

Costs of application.

SEC. 7. The costs of the proceedings authorized by the preceding sections, shall be paid by the applicant, or, if there be more than one, shall be apportioned among them.

Petition by executor for order requiring payment of money secured.

SEC. 8. Whenever any bond has been executed and delivered under the provisions of the preceding sections, and the excutor or administrator shall ascertain that it is necessary for the settlement of the estate to require the payment of any part of the money thereby secured, he shall petition the court for an order requiring the payment, and shall have a citation issued and served on the party bound, requiring him to appear and show cause why the order shall not be made. At the hearing, the court, if satisfied of the necessity of the payment, shall make an order accordingly, designating the amount, and giving the time within which it shall be paid; and if the money be not paid within the time allowed, an action may be maintained by the executor or administrator on the bond.

Distribution of residue.

SEC. 9. Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or any heir, devisee or legatee, the court shall proceed to distribute the residue of the estate, if any, among the persons who are by law entitled.

Decree.

SEC. 10. In the decree the court shall name the person and the portion or parts to which each shall be entitled; and such persons shall have the right to demand and recover their respective shares from the executor or administrator, or any person having the same in possession.

Ib. When made.

SEC. 11. The decree may be made on the application of the executor or administrator, or of any person interested in the estate, and shall only be made after notice has been given, in the manner required in regard to an application for the sale of land by an executor or administrator. The court may order such further notice to be given, as it may deem proper.

Partition, &c of undivided shares.

SEC. 12. When the estate, real or personal, assigned to two or more heirs, devisees or legatees, shall be in common and undivided, and the respectives shares shall not be separated and distinguished, partition and distribution may be made by three disinterested persons, to be appointed commissioners for that purpose by the probate judge, who shall be duly sworn to the faithful discharge of their duties; and the court shall issue a warrant to them for that purpose.

If in different counties.

SEC. 13. If the real estate be in different counties, the Probate Court may, if it shall judge proper, appoint different commissioners for each county, and in such cases the estate in each county shall be divided separately, as if there were no other estate to be divided; but the commissioners first appointed shall, unless otherwise directed by the Probate Court, make division of such real estate, wherever situated within the territory.

Notice of partition 11 Wen. 647; 17 do. 488; 1 Hill, 141, 2 do. 267

SEC. 14. Such partition and distribution may be ordered on the petition of any of the persons interested in the estate; but before any partition shall be ordered, as directed in this chapter, notice shall be given to all persons interested who shall reside in this territory, or to their guardians and to agents, attorneys or guardians, if there be any in this territory, of such as reside out of the territory, either personally, or by public notice, as the probate judge may direct.

Partition when shares have been conveyed.

SEC. 15. Partition of the real estate may be made as provided in this chapter, although some of the original heirs or devisees may have conveyed their shares to other persons; and such shares shall be assigned to the person holding the same, in the same manner as they otherwise would have been to such heirs or devisees.

Shares, how set out.

SEC. 16. The several shares in the real and personal estate, shall be set out to each individual in proportion to his right, by such metes, bounds or descriptions, that the same may be easily distinguished; unless two or more of the parties shall consent to have their shares set out, so as to be held by them in common and undivided.

Proceedings when partition impracticable.

SEC. 17. When any such real estate cannot be divided without prejudice or inconvenience to the owners, the Probate Court may assign the whole to one or more of the parties entitled to share therein, who will accept it, always preferring the males to the females, and, among children, preferring the elder to the younger: *Provided*, The party so accepting the whole, shall pay to the other parties interested their just proportion of the true value thereof, or secure the same to their satisfaction; and the true value of the estate shall be ascertained by commissioners appointed by the Probate Court, and sworn for that purpose.

Ib.

SEC. 18. When any tract of land or tenement shall be of greater value than either party's share in the estate to be divided, and cannot be divided without injury to the same, it may be set off by the commissioners appointed, to make partition to either of the parties who will accept it, giving preference as prescribed in the preceding sections; provided the party so accepting, shall pay or secure to one or more of the others, such sums as the commissioners shall award to make the partition equal, and the commissioners shall make their award accordingly; but such partition shall not be established by the court, until the sums so awarded shall be paid to the parties entitled to the same, or secured to their satisfaction.

Sale.

SEC. 19. When it cannot be otherwise fairly divided, the whole or any part of the estate, real or personal, may be recommended by the commissioners to be sold; and if the report be confirmed, the court may order a sale by the executor or administrator, or by an agent appointed for the purpose, and distribute the proceeds.

Testator's estate in common.

SEC. 20. When partition of real estate among heirs or devisees shall be required, and such real estate shall be undivided and in common with the real estate of any other person, the commissioners shall first divide and sever the estate of the deceased from the estate with which it lies in common, and such division so made and established by the Probate Court, shall be binding upon all the persons interested.

Guardians, when appointed.

Ib. Agents.

SEC. 21. Before any partition shall be made, or any estate divided as provided in this chapter, guardians shall be appointed for all minors and insane persons interested in the estate to be divided; and some discreet person shall be appointed to act as agent for such parties as reside out of the territory, and notice of the appointment of such agent shall be given to the commissioners in their warrant; and notice shall be given to all persons interested in the partition, their guardians or agents, by the commissioners, of the time when they shall proceed to make partition.

Report of commissioners.

SEC. 22. The commissioners shall make a report of their proceedings to the Probate Court in writing, and the court may, for sufficient reasons, set aside such report, and remit the same to the same commissioners, or appoint others; and the report, when finally accepted and established, shall be recorded in the Probate Court, and a copy thereof attested by the judge of probate under the seal of court, shall be recorded in the office of the recorder of the county where the land lies.

When partition may be dispensed with.

SEC. 23. When the Probate Court shall make a decree assigning the residue of any estate to one or more persons entitled to the same, it shall not be necessary to appoint commissioners to make partition or distribution of such estate, unless the parties to whom the assignment shall have been decreed, or some of them, shall request that such partition be made.

Question of advancement, how determined.

SEC. 24. All questions as to advancements made, or alleged to have been made by the deceased to any heirs, may be heard and determined by the Probate Court, and shall be specified in the decree assigning the estate, and in the warrant to the commissioners; and the final decree of the Probate Court, or in case of appeal, of the district or supreme courts, shall be binding on all parties interested in the estate.

Agent for absentee, when appointed. His bond.

SEC. 25. When any estate shall have been assigned by decree of the court, or distributed by commissioners as provided in this chapter, to any person residing out of this territory, and having no agent therein, and it shall be necessary that some person should be authorized to take possession and charge of the same for the benefit of such absent person, the court may appoint an agent for that purpose, and authorize him to take charge of such estate, as well as to act for such absentee in the partition and distribution.

His bond.

SEC. 26. Such agent shall give a bond to the territory of Oregon, to be approved by the probate judge, conditioned faithfully to manage and account for such estate, before he shall be authorized to receive the same; and the court appointing such agent may allow a reasonable sum out of the profits of the estate for his services and expenses.

Sale of unclaimed estate.

SEC. 27. When the estate shall have remained in the hands of the agent unclaimed for one year, it shall be sold under the order of the court, and the proceeds, deducting the expenses of sale, to be allowed by the court, shall be paid into the territorial treasury. When the payment is made, the agent shall take from the treasurer duplicate receipts, one of which he shall file in the office of the territorial auditor, and the other in the Probate Court.

Agent's liability on bond.

SEC. 28. The agent shall be liable on his bond for the care and preservation of the estate, while in his hands, and for the payment of the proceeds of sale, as required by the preceding section; and may be sued thereon by any person interested.

Claim of proceeds by absentee.

SEC. 29. When any person shall appear and claim the money paid into the treasury, the Probate Court making the distribution, being first satisfied of his right, shall grant him a certificate under its seal, and upon the presentation of the certificate to the auditor, he shall draw his warrant on the treasurer for the amount.

Discharge of executor.

SEC. 30. When the estate has been fully administered, and it shall have been shown by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under order of the court, all property of the estate to the persons entitled, the court shall make a decree discharging him from all liability to be incurred thereafter.

Letters of administration after final settlement.

SEC. 31. The final settlement of the estate shall not prevent a subsequent issuance of letters of administration, should other property of the estate be discovered, or should it become necessary and proper from any cause, that letters should be again issued.

# CHAPTER X.

## MISCELLANEOUS PROVISIONS.

SEC. 1. All orders and decrees to be entered; judge, when to sign the minutes.
2. Notice when to be given by citation.
3. & 4. Citation how and when served; original to be returned.
5. Writs, &c., to be signed by judge, under seal of court.
6. Practice in District Court how far applicable to Probate Court.

Entry of orders, &c.

SECTION 1. All orders and decrees made by the Probate Court during its terms, shall be entered at length on the records of the court; and also all orders which the judge is empowered to make out of term time, and which are by this act specially required to be so entered; and upon the close of each term the judge shall sign the minutes of the proceedings.

Notice when given by citation.

SEC. 2. Whenever personal notice is required by this act to be given to any party to a proceeding in the Probate Court, and no other mode of giving notice is prescribed, it shall be given by citation issued from the court signed by the judge, and under the seal of the court, directed to the sheriff of the proper county, requiring him to cite such person to appear before the court or judge, as the case may be, at a time and place to be named in such citation. In the body of the citation shall be briefly stated the nature or character of the proceedings.

SEC. 3. The officer to whom the citation is directed, shall serve it by delivering a copy to the person named therein, or to each of them if there be more than one; and shall return the original to the court, according to its direction, indorsing thereon the time and manner of service. How served.

SEC. 4. When no other time has been specially prescribed, citation shall be served at least five days before return day. Ib.

SEC. 5. All writs and processes issued from the Probate Court shall be signed by the judge, and under the seal of the court. Requisites of writs, &c.

SEC. 6. The practice in the District Court shall be applicable to proceedings in the Probate Court, so far as the same does not conflict with any enactment specially applicable to the Probate Court, or is not inconsistent with the provisions of this act, or an act to provide for the appointment, and prescribe the duties of guardians. Practice in District Court, how far applicable to Probate Court.

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## CHAPTER XI.

### DESCENT OF REAL ESTATE.

SEC. 1. Land, how to descend.
2. Illegitimate children, when to inherit
3. Estate of illegitimate child, to whom to descend.
4. Bastards, legitimatized by intermarriage.
5. Degrees of kindred, how computed; half-blood to inherit.
6. Advancement, how to be considered.
7 When advancement to exclude heir from further portion.
8 Advancement, how estimated.
9. Gifts, when deemed advancements.
10. Value of advancement, how estimated.
11. In case of death of heir, advancement to be allowed by representatives.
12. Construction of this chapter
13. Words "issue," "real estate," "succession by right of representation," defined.

SECTION 1. When any persons shall die seized of any lands, tenements or hereditament, or any right thereto, or entitled to any interest therein in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, as follows: Land, how to descend.

1. In equal shares to his children, and to the issue of any deceased child by right of representation; and if there be no child of the intestate living at the time of his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall have the estate equally; otherwise they shall take according to the right of representation;

2. If he shall leave no issue, his estate shall descend to his father;

3. If he shall leave no issue, nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children of any deceased brother or sister by right of representation: *Provided,* 2 Denio 9.

That if he shall leave a mother also, she shall take an equal share with the brothers and sisters.

4. If the intestate shall leave no issue, nor father, and no brother nor sister, living at his death, his estate shall descend to his mother to the exclusion of the issue of his deceased brothers or sisters;

5. If the intestate shall leave no issue, father, mother, brother nor sister, his estate shall descend to his next of kin in equal degree; excepting that, when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor more remote: *Provided, however,*

6. If any person shall die leaving several children, or leaving one child, and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

7. If at the death of such child, who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the estate equally; otherwise, they shall take according to the right of representation.

8. If the intestate shall leave no kindred, his estate shall escheat to the territory.

Illegitimate children.

SEC. 2. Every illegitimate child shall be considered an heir of his mother, and shall inherit her estate in whole or in part as the case may be, in like manner as if he had been born in lawful wedlock; but such illegitimate child shall not be allowed to claim, as representing his mother, any part of the estate of her kindred, either lineal or collateral.

Estate of illegitimates.

SEC. 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother; excepting in the case provided for in the following section.

Bastards legitimatized.

SEC. 4. When, after the birth of an illegitimate child, his parents shall intermarry, such child shall be considered legitimate to all intents and purposes.

Degree of kindred; half-blood.

SEC. 5. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half-blood shall inherit equally with those of the whole blood in the same degree.

Advancement.

SEC. 6. Any estate, real or personal, that may have been given by the intestate in his lifetime, as an advancement to any child or other lineal descendant, shall be considered a part of the intestate's estate, so far as regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the intestate's estate.

SEC. 7. If the amount of such advancement shall exceed the

Ib. When to exclude heir from further portion.

share of the heir so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to so much more as will give him his full share of the estate of the deceased.

Advancement, how considered

SEC. 8. If any such advancement shall have been made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, and if, in either case, it shall exceed the share of real or personal estate respectively that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make the whole share equal to those of the other heirs who are in the same degree with him.

When gifts, &c., deemed advancement.

SEC. 9. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing as such by the child or other descendant.

Value of advancement, how estimated.

SEC. 10. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered of that value in the division and distribution of the estate; otherwise, it shall be estimated at its value when given.

Advancement, when to be allowed by representatives.

SEC. 11 If any child or lineal descendant so advanced, shall die before the intestate, leaving issue, the advancement, shall be taken into consideration in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

Constructions of this chapter

SEC 12. Nothing contained in this chapter shall affect the title of a husband as tenant by curtesy, nor that of a widow as tenant in dower.

"Issue," "real estate," "succession by right of representation" defined.

SEC. 13. The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor; and the words "real estate" include all lands, tenements and hereditaments, and all rights thereto, and all interests therein possessed, and claimed in fee simple, or for the life of a third person. Inheritance, or "succession by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken if living. Posthumous children are considered as living at the death of their parent.

# CHAPTER XII.

## DISTRIBUTION OF PERSONAL ESTATE.

SEC. 1. Order of distribution and application of personal estate.
2. Widow entitled to one-half of estate deducting advancement.
3. Act declaratory as to when these laws took effect.
4. Act, when to take effect.

Order of distribution.

SEC. 1. When any person shall die possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

1. The widow, if any, shall be allowed all articles of her apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries for the use of herself and the family under her care, as shall be allowed and ordered in pursuance of the provisions of this act; and this allowance shall be made, as well when the widow waives the provision made for her in the will of her husband, as when he dies intestate;

2. The personal estate remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges for his funeral, and the settling of the estate;

3. The residue, if any, of the personal estate, shall be distributed among the same persons as would be entitled to the real estate by this act, and in the same proportion as there prescribed, excepting as is herein further provided;

4. If the intestate were a married woman, her husband shall be entitled to the whole of the said residue of the personal estate;

5. If the intestate leave a widow and issue, the widow shall be entitled to one-half of said residue;

6. If there be no issue, the widow shall be entitled to the whole of said residue;

7. If there be no husband, widow or kindred of the intestate, the whole shall escheat to the territory.

Widow entitled to half, deducting advancements.

SEC. 2. If the intestate leave a widow and issue, and any of the issue shall have received an advancement from the intestate in his lifetime, the value of such advancement shall not be taken into consideration in computing the one-half part to be assigned to the widow; but she shall be entitled to the one-half only of the said residue after deducting the value of the advancement.

Act declaratory as to when these laws took effect.

SEC. 3. Whereas doubts have arisen as to what has been the law in relation to the distribution of personal estate in this territory: the rule of distribution established by this chapter is hereby declared to have been the law of the land since the first session of the Legislative Assembly of this territory, begun and held at Oregon City, on the 16th day of July, A. D. 1849. *Provided*, That nothing in this section contained shall be so construed as to disturb the settlement of any estate whereof administration is complete, and distribution made.

Proviso.

Act when to take effect.

SEC. 4. This act shall take effect and be in force from and after the first day of May next.

*Passed December 14th*, 1853.

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## *AN ACT* TO AMEND AN ACT, ENTITLED "AN ACT RESPECTING EXECUTORS, ADMINISTRATORS, AND THE DISTRIBUTION OF REAL AND PERSONAL ESTATE.

SEC. 1. Administrators, &c., notice of final settlement, how published.
2. 19th sec. of chap. 8, repealed.
3. Act, when to take effect.

Notice of final settlement.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That when the account is rendered for final settlement, notice thereof shall be given by the probate judge, by causing notice to be published in a paper in the county, if there is one published, and if not, in the newspaper published nearest to the place of holding the courts, for three successive weeks: the notice shall set forth the name of the estate, of the executor, administrator, and the day appointed for final settlement of accounts, which shall be on some day of a term of court.

Sec 19, ch. 8, repealed.

SEC. 2. That the nineteenth section of the eighth chapter of the act to which this is amendatory, is hereby repealed.

Act, when to take effect.

SEC. 3. This act to take effect and be in force from and after its passage.

*Passed January* 31*st*, 1855.

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## *AN ACT* RELATING TO WILLS

# CHAPTER I.

### WILLS.

SEC. 1. As to who may devise real and personal estate by will.
2. Persons over eighteen may dispose of personal estate
3. Married women may dispose of real estate, subject to the curtesy.
4. Wills, how to be executed.
5. Persons signing testator's name, what to state.
6. Written wills, how to be revoked or cancelled.
7. Marriage and birth of issue, when a revocation of prior will.
8. Will of unmarried woman revoked by subsequent marriage
9. Bond, &c., to convey property devised, not a revocation, &c.
10. Charge or incumbrance not a revocation, property to pass subject thereto.
11. Children, or their descendants, if unprovided for, to have portion of estate.
12. Unless, in case of advancement equal to their portion.
13. When issue of deceased devisee to take estate.
14. Cancelling of a second will not to revive first will, unless. &c.
15. Probate Court to take proof of wills
16 Will, where to be proved.
17. When court may grant certificate of probate or rejection
18. Commission to examine witness, when to issue.
19. Testimony of witness to have same force as if given in court
20. Proceedings, when only one attesting witness can be examined.
21. If all witnesses are dead or absent.
22. All testimony in support of will to be reduced to writing.
23 Nuncupative wills, how made, &c
24. How soldiers and mariners may dispose of wages, &c.
25. Nuncupative will, how and when to be proved.

CHAP. 1 SEC. 26. Probate, when to be granted.
27. Wills to be recorded thirty days after probate.
28. Certified copy therof, evidence.
29 Effect of proof and of record
30 Wills, when to be recorded in different counties.
31. Proceedings on validity of will, where to be instituted.
32. Effect of verdict in such case.
33. If proceedings not instituted in five years, probate or rejection will be final, except on persons under disability.
34. Oath of witness at time of probate, when admissible in subsequent proceedings.
35. Devise of real or personal property by non-resident.
36. Copies of foreign wills, how recorded.
37. Foreign wills contested and annulled as other wills.
38. Devisee or legatee may witness wills; devise void as to him.
39. Share of estate, when to be saved to such witness.
40 If sufficient other witnesses, legacy to be valid.
41. Creditor attesting will may be witness.
42 & 43. Legatee, how made competent to witness will; his credibility.
44. Legatee to be deemed legal witness in case he die during testator's lifetime.
45. Legatee, when not entitled to legacy.
46. Estate for life, remainder in fee.
47. When fee simple passes, "heirs and assign," &c., being omitted.
48. Contribution among other legatees, when a bequest is taken in execution for testator's debts.
49. Ib. In case legatees are required to refund.
50. Term "will" to include codicil.
51. Court, how to execute directions of will.
52. Power of court to compel production of will.
53. Act, when to take effect.

Who may will real and personal estate.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That every person of twenty-one years of age and upwards, of sound mind, may, by last will, devise all his estate, real and personal, saving to the widow her dower.

Persons over eighteen.

SEC. 2. Every person over the age of eighteen years, of sound mind, may, by last will, dispose of his goods and chattels.

Married women.

SEC. 3. A married woman may, by will, dispose of any real estate held in her own right, subject to any rights which her husband may have as tenant by the curtesy.

Will, how to be executed.

SEC. 4. Every will shall be in writing, signed by the testator, or by some other person under his direction, in his presence, and shall be attested by two or more competent witnesses, subscribing their names to the will in the presence of the testator.

Persons signing testator's name.

SEC. 5. Every person who shall sign the testator's name to any will by his direction, shall subscribe his own name as a witness to such will, and state that he subscribed the testator's name at his request.

Written wills how to be revoked or cancelled. 4 Barb. 28.

SEC. 6. No will in writing, except in cases hereinafter mentioned, nor any part thereof, shall be revoked, except by a subsequent will in writing, or by burning, cancelling, tearing or obliterating the same by the testator, or in his presence, and by his consent and direction.

When revoked by marriage and birth of issue. 1 Denio, 27; 7 Paige, 97

SEC. 7. If, after making a will disposing of the whole estate of the testator, such testator shall marry and die, leaving issue by such marriage living at the time of his death, or shall leave issue of such marriage born to him after his death, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, and no evidence shall be received to rebut the presumption of such revocation.

Will of unmarried woman.

SEC. 8. A will made by an unmarried woman shall be deemed revoked by her subsequent marriage.

Bond, etc., to convey property devised not a revocation, etc.

SEC. 9. A bond, covenant or agreement made for a valuable consideration by a testator, to convey any property devised or bequeathed in any last will previously made, shall not be deemed a revocation of such previous devise or bequest, either in law or equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, covenant or agreement for the specific performance or otherwise, against devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Charge or incumbrance, not a revocation.

SEC. 10. A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant or agreement, shall not be deemed a revocation of any will relating to the same estate, previously executed; the devises and legacies therein contained shall pass and take effect, subject to such charge or incumbrance.

Children or descendants, if unprovided for, to have portion of estate.

SEC. 11. If any person make his last will and die, leaving a child or children, or descendants of such child or children, in case of their death, not named or provided for in such will, although born after the making of such will, or the death of the testator, every such testator, so far as shall regard such child or children, or their descendants not provided for, shall be deemed to die intestate; and such child or children, or their descendants, shall be entitled to such proportion of the estate of the testator, real and personal, as if he had died intestate; and the same shall be assigned to them; and all the other heirs, devisees and legatees shall refund their proportional part.

Unless in case of certain advancement.

SEC. 12. If such child or children, or their descendants, shall have an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they shall take nothing by virtue of the provisions of the preceding section.

When issue of deceased, etc., to take estate. 4 Hill 139.

SEC. 13. When any estate shall be devised to any child, grandchild, or other relative of the testator, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate, real and personal, as such devisee would have done, in case he had survived the testator.

Cancelling of second will, not to revive first, except, etc.

SEC. 14. If, after making any will, the testator shall duly make and execute a second will, the destruction, cancelling or revocation of such second will shall not revive the first will, unless it appear, by the terms of such revocation, that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

SEC. 15. The Probate Court shall take proof of last wills.

Will, where to be proved.

SEC. 16. If the testator have a mansion-house or known place of abode in any county, his will shall be there proved; if he have no

CHAP 1. place of residence, and lands be devised, it shall be proved in the county where any part of the lands lie; and if he have no residence, and there be no lands devised, the will shall be proved in the county in which the testator died; or, if he died out of the territory, then in any county.

Certificate of probate, or rejection. SEC. 17. When any will is exhibited to be proven, the court may immediately receive the proof and grant a certificate of probate, or if such will be rejected, grant a certificate of rejection.

Commission to examine witness. SEC. 18. If any witness be prevented by sickness from attending at the time when any will may be produced for probate, or reside out of the territory, or more than thirty miles from the place where the will is to be proven, such court may issue a commission, annexed to such will, and directed to any judge, justice of the peace, or mayor, or other person, empowering him to take and certify the the attestation of such witness.

Affidavit of witness. SEC. 19. If such witness appear before such officers, and make oath or affirmation that the testator signed the writing annexed to such commission, as his last will; or that some other person signed it by his direction, and in his presence; that he was of sound mind; that the witness subscribed his name thereto in the presence of the testator; the testimony so taken shall have the same force as if taken before the court.

Proceedings when one witness only can be examined. SEC. 20. When one of the witnesses to such will shall be examined, and the other witnesses are dead, insane, or their residence unknown, then such proof shall be taken of the handwriting of the testator, and of the witnesses insane, dead, or residence unknown, and of such other circumstances, as would be sufficient to prove such will on a trial at common law.

If all witnesses be dead, what, etc. SEC. 21. If it shall appear, to the satisfaction of the court, that all the subscribing witnesses are dead, insane, or their residence unknown, the court shall take and receive such proof of the handwriting of the testator and subscribing witnesses to the will, and of such other facts and circumstances, as would be sufficient to prove such will in a trial at law.

Testimony to be reduced to writing, etc. SEC. 22. All the testimony adduced in support of any will shall be reduced to writing, signed by the witnesses, and certified by the judge of probate.

Nuncupative wills, how made, etc. SEC. 23. No nuncupative will shall be good, when the estate bequeathed exceeds the value of two hundred dollars; nor unless the same be proven by two witnesses, who were present at the making thereof; nor unless it be proven that the testator, at the time of pronouncing the same, did bid some person present to bear witness that such was his will, or to that effect; nor unless such nuncupative will was made at the time of the last sickness, and at the dwelling-house of the deceased, or where he had been residing for the space of ten days or more, except where such person was taken sick from home and died before his return.

SEC. 24. Any mariner at sea, or soldier in the military service, may dispose of his wages or other personal property as he might have done by common law, or by reducing the same to writing.

Mariners and soldiers may dispose of wages, etc.

How proved.

SEC. 25. No proof shall be received of any nuncupative will, unless it be offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken.

Probate, when granted.

SEC. 26. No probate of any nuncupative will shall be granted for fourteen days after the death of the testator; nor shall any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and a citation issued, accompanied with a copy thereof, to call the widow or next of kin of the deceased, that they may contest the will if they think proper.

Wills to be recorded, etc

SEC. 27. All wills shall be recorded by the probate judge, in a book kept for that purpose, within thirty days after probate, and the originals shall be carefully filed.

When evidence

SEC. 28. Every will proved according to the provisions of this act, recorded and certified by the judge of probate, and attested by his seal of office, may be read as evidence, without any farther proof.

Effects of proof and record, etc. 2 Paige, 429.

SEC. 29. The record of any will made, proved and recorded as aforesaid, and the exemplification of such record by the judge of probate, in whose custody the same may be, shall be received as evidence, and shall be as effectual in all cases as the original would be if produced and proven, and may, in like manner, be repelled by contrary proof.

When to be recorded in several counties.

SEC. 30. In all cases where lands devised by last will are situated in different counties, a copy of such will shall be recorded in the recorder's office in each county, within six months after probate.

Proceedings on validity of will, when to be instituted.

SEC. 31. If any person interested in the probate of any will shall appear within five years after the probate or rejection thereof, and, by petition to the District Court for the county, contest the validity of the will, or pray to have the will proven which has been rejected, an issue shall be made up, whether the writing produced be the will of the testator or not, which shall be tried by a jury, or, if neither party require a jury, by the court.

Verdict in such case.

SEC. 32. The verdict of the jury, or the finding and judgment of the court, shall be final, saving to the court the right of granting a new trial, as in other cases, and to either party an appeal, in matters of law, to the Supreme Court.

If proceedings not instituted in five years.

SEC. 33. If no person shall appear within the time aforesaid, the probate or rejection of such will shall be binding, saving to infants, married women, persons absent from the United States, or of unsound mind, a like period of five years after their respective disabilities are removed.

Oath of witness at time of probate, when admissible in sub-

SEC. 34. In all trials respecting the validity of a will, if any subscribing witness be deceased, or cannot be found, the oath of such witness examined at the time of probate, shall be admitted as evi-

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sequent proceedings.

dence, and shall have such weight as the court or jury may think it deserves.

Lex loci, when and when not to govern

SEC. 35. Any person not an inhabitant, but owning property, real or personal, in this territory, may devise or bequeath such property by last will, executed and proved (if real estate be devised) according to the laws of this territory, or (if personal estate be bequeathed) according to the laws of this territory, or of the country, state or territory in which the will shall be proved.

Copies of foreign wills, how recorded.

SEC. 36. Copies of such will, and the probate thereof, shall be recorded in the same manner as wills executed and proven in this territory, and shall be admitted in evidence in the same manner, and with like effect.

Ib How contested.

SEC. 37. Any such will may be contested and annulled within the same time, and in the same manner as wills executed and proven in this territory.

Devisee and legatee may witness will, but devise to him void.

SEC. 38. If any person has attested, or shall attest the execution of any will, to whom any beneficial devise, legacy, estate, interest, gift or appointment of, or affecting any real or personal estate, other than or except charges in lands, tenements or hereditaments, for the payment of any debt or debts, shall be thereby given or made; such devise, legacy, estate, gift or appointment shall, so far only as concerns such person attesting the execution of such will, or any person claiming under him, be void, and such person shall be admitted as a witness to the execution of such will.

When share of the estate to be saved to such witness

SEC. 39. If any such witness would be entitled to any share in the testator's estate, in case the will should not be established, then so much of the estate as would have descended, or would have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will; and he may recover the same from the devisees or legatees named in the will, in proportion to, and out of the parts devised and bequeathed to him.

Ib. If sufficient other witnesses.

SEC. 40. If the execution of such will be attested by a sufficient number of other competent witnesses, as required by this act, then such devise, legacy, interest, estate, gift or appointment shall be valid.

Creditor may witness.

SEC. 41. If, by any will, any real estate be charged with any debt, and any creditor, whose debt is so charged, has attested the execution of such will, every such creditor shall be admitted as a witness to the execution of such will.

Legatee, how made competent.

SEC. 42. If any person has attested, or shall attest the execution of any will, to whom any legacy or bequest is thereby given, and such person, before giving testimony concerning the execution of such will, shall have been paid, or have accepted or released, or shall refuse to accept such bequest or legacy upon tender thereof, such person shall be admitted as a witness to the execution of such will.

His credibility.

SEC. 43. The credit of such witness shall be subject to the consideration of the court or jury.

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Ib When deemed legal witness.

SEC. 44. If any legatee or devisee who has attested or shall attest the execution of any will, shall have died, or die in the lifetime of the testator, or before he shall have received or released the legacy or bequest so given to him, and before he shall have refused to receive such legacy or bequest, on a tender made thereof, such legatee or devisee shall be deemed a legal witness to the execution of such will.

Legatee, when not entitled to legacy.

SEC. 45. No person to whom any estate, gift, or appointment shall be given or made, which is hereby declared to be null and void, or who shall have refused to receive such legacy or bequest on tender made; and who shall have been examined as a witness concerning the execution of such will, shall, after he shall have been so examined, demand or receive, except as provided in the thirty-ninth section, any profit or benefit of, or from any such estate, interest, gift, or appointment so given or made to him, by any such will, or demand receive or accept from any person any such legacy or bequest, or any satisfaction or compensation for the same.

Estate for life, remainder in fee.

SEC. 46. If any person, by last will, devise any real estate to any person for the term of such person's life, and after his or her death, his or her children or heirs, or right heirs in fee, such devise shall vest an estate for life only in such devisee, and remainder in fee simple in such children.

When fee simple passes, the words, "heirs and assigns" being omitted.

SEC. 47. In all devises of lands, or other estate in this territory, in which the words "heirs and assigns," or "heirs and assigns forever" are omitted, and no expressions are contained in such will, whereby it shall appear that such devise was intended to convey an estate for life only, and no further devise be made of the devised premises, to take effect after the death of the devisee, to whom the same shall be given, it shall be understood to be the intention of the testator thereby to devise an absolute estate in the same, and shall convey an estate in fee simple to the devisee for all such devised premises.

Contribution among, &c.

SEC. 48. When any testator, in his last will, shall give any chattel or real estate to any person, and the same shall be taken in execution for the payment of the testator's debts, then all the other legatees, devisees and heirs shall refund their proportional part of such loss to such person from whom the bequest shall be taken.

Ib

SEC. 49. When any devisees, legatees or heirs shall be required to refund any part of the estate received by them, for the purpose of making up the share, devise, or legacy of any other devisee, legatee or heir, the Probate Court, upon the petition of the person entitled to contribution or distribution of such estate, shall order the same to be made according to equity, and enforce such order with like effect as decrees in courts of equity.

"Will," to include codicils.

SEC. 50. The term "will," as used in this act, shall be so construed as to include all codicils as well as wills.

Construction of wills.

SEC. 51. All courts and others concerned in the execution of last wills, shall have due regard to the directions of the will, and the true interests and meaning of the testator in all matters brought before them.

* * *

Court can compel production of will.

SEC. 52. If the Probate Court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate, such court shall have power to summon such person, and compel him, by attachment, to produce the same.

Act when to take effect.

SEC. 53. This act shall take effect and be in force from and after the first day of May next.

*Passed December* 15, 1853.

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## *AN ACT* RELATING TO PARENTS AND CHILDREN, GUARDIANS AND WARDS, AND TO MASTERS, APPRENTICES AND SERVANTS.

## CHAPTER I.

### OF PARENTS AND CHILDREN.

SEC. 1. Parents and children, when liable for each other's support.
2. Minor's maintenance, when may be chargeable on minor's estate.
3. Mother cannot bind, after marriage.

Parents and children, when liable for each other.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That parents shall be bound to maintain their children when poor and unable to work to maintain themselves; and children shall be bound to maintain their parents in the like circumstances.

Minor's maintenance when chargeable on minor's estate.

SEC. 2. If any minor, who has a father living, have property, the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable by the Probate Court, and the charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

Mother cannot bind after marriage.

SEC. 3. The power of the mother to bind her children, whether legitimate or illegitimate, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

# CHAPTER II.

## OF GUARDIANS AND WARDS.

SEC. 1. Judge of probate may appoint guardians.
2. Who to nominate guardians; when judge to nominate
3. Nomination, when to be certified by justice of the peace.
4 Powers and duties of guardian: proviso
5. Bond of guardian.
6. Father may appoint guardian by will.
7 Bond of guardian so appointed: proviso.
8. Powers of court to appoint guardian to defend or prosecute suits.
9. Application for guardian on behalf of insane persons, appointment.
10. Power and duties of such guardian
11. When guardian may be appointed for spendthrift, &c.
12. Notice to spendthrift and appointment of guardian
13. Copy of complaint, &c, to be filed with recorder of deeds, and its effects.
14. Judge to make allowance in such case, for expenses of ward in defending himself.
15. Powers and duties of guardian for spendthrift
16. Ib. In settling accounts and collecting debts
17. How to manage estate of his ward.
18. Appraisal of estate of ward disposal of personal estate.
19. Court may authorize transfer and investment of stock.
20 Removals and resignations of guardians.
21. Marriage of female ward terminates guardianship.
22. Power of court to require new bonds, and discharge sureties
23. Action against sureties on bond, when to be brought.
24. Proceedings against guardian in case of suspected embezzlement.
25. Appointment of guardian for non-resident minor
26. Powers and duties of such guardian.
27. His bond
28 Guardianship first granted, exclusive throughout territory
29. Compensation of guardian.
30. Joint accounts may be allowed on oath of one guardian.
31. The words "insane person" and "spendthrift" defined.

Judge of probate may appoint guardians.

SECTION 1. The judge of probate for each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others being inhabitants or residents in such county, and also to such as shall reside without this territory, and have any estate within the same.

Who to nominate; judge.

SEC. 2. If the minor is under the age of fourteen years, the judge of probate may nominate and appoint his guardian, and if he is above that age, he may nominate his own guardian, who, if approved by the judge, shall be appointed accordingly; and if the guardian, nominated by such minor, shall not be approved by the judge, or if the minor shall reside without this territory, or if, after having been cited by the judge, he shall neglect to nominate a suitable person, the judge may nominate and appoint the guardian, in the same manner as if the minor were under fourteen years of age.

Nominations when to be certified by justice.

SEC. 3. When such minor, being above the age of fourteen years, shall reside more than ten miles from the place of holding the Probate Court, his nomination of a guardian may be certified to the judge of probate by a justice of the peace, which shall have the same effect as if made in the presence of the judge.

Powers and duties of guardian; proviso.

SEC. 4. Every guardian so appointed, shall have the custody and tuition of the minor, and the care and management of his estate, and shall continue in office until the minor shall have arrived to the age of twenty-one years, or until the guardian shall have been discharged according to law: *Provided, however*, That the father of the minor, if living, and in case of his death, the mother, while she remains unmarried, being themselves respectively competent to transact their own business, shall be entitled to the custody of the person of the minor, and to the care of his education.

Bond of guardian.

SEC. 5. Every such guardian shall give bond, with surety or sureties to the territory of Oregon, in such sum as the judge of probate may order, with conditions, as follows:

1. To make a true inventory of all the real estate, and of all the goods, chattels, rights and credits of the ward, that shall come to his possession or knowledge, and to return the same into the Probate Court, at such time as the judge may order;
2. To dispose of and manage all such estate and effects according to law, and for the best interest of the ward; and faithfully to discharge his trust in relation thereto, and in relation to the custody, education and maintenance of the ward;
3. To render, on oath, an account of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the judge of probate shall direct;
4. At the expiration of his trust to settle his accounts with the probate judge, or with the ward, or his legal representatives, and to pay and deliver over all the estate and effects remaining in his hands, or due from him on such settlement, to the person or persons who shall be lawfully entitled thereto.

Appointment by will.

SEC. 6. Every father may, by his last will in writing, appoint a guardian or guardians for any of his children, whether born at the time of making the will or afterwards, to continue during the minority of the child, or for a less time; and every such testamentary guardian shall have the same powers, and perform the same duties with regard to the person and estate of the ward, as a guardian appointed by the judge of probate.

Bond; proviso.

SEC. 7. Every such testamentary guardian shall give bond in like manner, and with like conditions as is before required of a guardian appointed by the judge of probate: *Provided*, That when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless, from a change in the situation or circumstances of the guardian, or for other sufficient cause, the judge of probate shall think proper to require it.

Guardian to defend and prosecute suits.

SEC. 8. Nothing contained in this chapter shall impair the power of the Supreme Court, the District Court, Probate Court, or courts of a justice of the peace, to appoint a guardian to defend the interests of any minor impleaded in such courts, or interested in any suit or matter therein pending; nor their power to appoint or allow any person as next friend for a minor to commence, prosecute or defend any suit in his behalf.

Ib For insane persons.

SEC. 9. When the relations or friends of any insane person, or any other persons, inhabitants of the county in which such insane person resides, shall apply to the probate judge, by petition in writing, to have a guardian appointed for him, the judge shall cause notice to be given to the supposed insane person of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the probate judge that the person in question is incapable of taking care of himself, the judge shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

His power and duties.

SEC. 10. Every guardian so appointed for an insane person, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged, and he shall give bond to the territory of Oregon, in like manner and with like conditions as is before prescribed with respect to the guardian of a minor, excepting that the provision relating to the education of the ward, shall be omitted in the condition of the bond.

When guardian appointed for spendthrift, etc.

SEC. 11. When any person, by excessive drinking, gaming, idleness, or debauchery of any kind, shall so spend, waste or lessen his estate, as to expose himself or his family to want or suffering, or the county to charge and expense for the support of himself and family, the county commissioners for such county, of which such spendthrift is a resident or an inhabitant, shall present a complaint to the probate judge, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

Notice to spendthrift.

SEC. 12. The probate judge shall cause notice to be given, to such supposed spendthrift, of the time and place appointed for hearing the case, not less than ten days before the time so appointed; and if, after a full hearing, it shall appear to the probate judge that the person complained of comes within the description contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Appointment.

Copy of complaint, etc., to be filed.

SEC. 13. After the order of notice has been issued, the complainants shall cause a copy of the complaint, with the order of notice, to be filed in the office of the recorder of deeds for the county; and, if a guardian shall be appointed on such application, all contracts, excepting for necessaries, and all gifts, sales or transfers of real or personal estate, made by such spendthrift, after such filing of the complaint in the recorder's office, and before the termination of the guardianship, shall be null and void.

Allowance in such case for ward defending, etc

SEC. 14. When a guardian shall be appointed for an insane person or spendthrift, the judge shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint.

Guardian for spendthrift, his powers and duties.

SEC. 15. Every guardian so appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged; and he shall give bond to the territory of Oregon, in

CHAP. 2. like manner and with like condition as is before directed with respect to the guardian of an insane person.

Ib. In settling accounts. SEC. 16. Every guardian appointed under the provisions of this chapter, shall pay all just debts due from his ward, out of his personal estate, if sufficient, and if not, out of his real estate, upon obtaining a license for the sale thereof, as provided by law; he shall also settle all accounts of the ward, and demand, sue for and receive all debts due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, upon receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend.

How to manage estate of ward. SEC. 17. The guardian shall also manage the estate of his ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family.

Appraisal of ward's estate. SEC. 18. Upon the taking of any inventory as required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn in like manner as is required with respect to the inventory of a deceased testator or intestate; and every guardian shall account for and dispose of the personal estate of his ward, in like manner as is directed with respect to executors and administrators.

Court may authorize transfer and investment of stock, etc. SEC. 19. The judges of probate, in their respective counties, on the application of a guardian, or of any person interested in the estate of any ward, after notice to all other persons interested, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects held by him as guardian, and invest the proceeds of such sale, and also all other moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein; and the Probate Court may make such further order, and give such directions as the case may require, for managing, investing and disposing of the estate and effects in the hands of the guardian.

Removals and resignations of guardians. SEC. 20. When any guardian, appointed either by a testator or by the judge of probate, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate, after notice to such guardian, and to all others interested, may remove him; and every guardian, upon his request, may be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same; and upon every such resignation or removal, and also upon the death of any guardian, the judge of probate may appoint another in his stead.

Marriage of female ward.

SEC. 21. The marriage of any female, who is under guardianship as a minor, shall operate as a discharge of her guardian; and the guardian of any insane person, or spendthrift, may be discharged by the probate judge, when it shall appear to him, on the application of the ward or otherwise, that such guardianship is no longer necessary.

New bonds.

SEC. 22. The Probate Court may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like case, and upon the like terms as are prescribed with regard to executors or administrators.

When action to be brought against sureties.

SEC. 23. No action shall be maintained against the sureties in any bond given by a guardian, unless it be commenced within three years from the time when this chapter shall take effect, or within three years from the time when such guardian shall be discharged: *Provided* That, if at the time of such discharge the person entitled to bring such action shall be out of the territory, the action may be commenced at any time within three years after his return to the territory.

Proceedings in case of suspected embezzlement.

SEC. 24. Upon complaint made to the probate judge by any guardian, or by the ward, or by any creditor or other person interested in his estate, or by persons having claims thereto in expectancy, as heir or otherwise, against any one suspected of having concealed, embezzled, or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person, and proceed with him, as to such charge, in the same manner as is provided respecting persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Guardian for non-resident minors.

SEC. 25. When any minor or other person liable to be put under guardianship, according to the provisions of this chapter, shall reside without this territory, and shall have any estate therein, any friend of such person, or any one interested in his estate in expectancy or otherwise, may apply to the judge of probate for any county in which there may be any estate of such absent person, and after notice to all persons interested, to be given in such manner as the judge shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

Ib His powers and duties.

SEC. 26. Every guardian appointed according to the provisions of the preceding section, shall have the same powers and duties with respect to any estate of the ward that may be found within this territory, and also with respect to the person of the ward if he shall come to reside therein, as are prescribed to any other guardian appointed by force of this chapter.

Ib. Bond.

SEC. 27. Every such guardian shall give bond to the territory of Oregon, in like manner and with like condition as is above provided with respect to other guardians, excepting that the provisions respecting the inventory, the disposal of the estate, and the account to be rendered by the guardian, shall be confined to such estate and effects which shall come to his hands in this territory; and that the provisions respecting the custody of the ward shall not be applicable, unless the ward shall come to reside in this territory.

First guardianship to be exclusive.

SEC. 28. The guardianship, which shall first be lawfully granted of any person residing without this territory, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the Probate Court of any other county.

Compensation, etc., of guardian.

SEC. 29. Every guardian shall be allowed the amount of all his reasonable expenses incurred in the execution of his trust, and shall also have such compensation for his services as the court, in which his accounts are settled, shall consider just and reasonable.

Joint account of, how allowed.

SEC. 30. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same upon the oath of any one of them.

"Insane person" and "spendthrift" defined.

SEC. 31. The words "insane person" are intended to include every idiot, every person not of sound mind, every lunatic and distracted person; and the word "spendthrift" is intended to include any one who is liable to be put under guardianship on account of excessive drinking, gaming, idleness, or debauchery; and these words shall be so construed in all the provisions relating to guardians and wards, contained in this or any other statute.

# CHAPTER III.

## OF MASTERS, APPRENTICES AND SERVANTS.

SEC. 1. Term of indenture.
2. Persons who may bind or be bound.
3. Minors over fourteen, how to be bound.
4. Indentures, how executed
5. One part of indenture to be kept for minor.
6. Power of county commissioners to bind.
7. Term of indentures in such cases.
8. Indentures, how executed.
9. Certain moneys to be secured for apprentice.
10. Who to inquire into treatment of apprentices.
11. Complaint against master for misconduct.
12. When court may discharge minor, and award costs against master.
13 Costs, when to be awarded against complainant.
14. Master liable for breach of indenture; action, how brought; damages, how awarded.
15. As to who may bring such action.
16 When not to abate.
17. Within what time action to be commenced
18. If judgment be rendered for minor, he may be discharged.
19. Proceedings, if apprentice leave service of master
20. Warrant of justice in such case.
21. Who to pay costs.
22. Complaint against apprentice; proceedings thereon.
23. Discharge of master from indentures.
24. Death of master to discharge apprentice.
25. Foregoing provisions applicable to females.
26 Common law right of father not to be affected.
27. Act, when to take effect.

Term of indenture.

SECTION 1. All children under the age of fourteen years, may be bound as apprentices or servants until that age; and all minors above the age of fourteen years, may be bound as apprentices or servants; females until the age of eighteen years or to the time of their marriage within that age, and males until the age of twenty-one years, in the manner prescribed in this chapter.

Who may bind or be bound.

SEC. 2. Children under the age of fourteen years may be bound by their father, or, in case of his death or incompetency, by their mother, or by their legal guardian; and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves with the approbation of the probate judge of the county where they reside.

Minors over fourteen.

SEC. 3. Minors above the age of fourteen years may be bound in the same manner: *Provided*, That when they are bound by their parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same.

Indentures, how executed.

SEC. 4. No minor shall be bound as aforesaid, unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the probate judge, his approbation shall be certified in writing, signed by the judge on each part of the indenture.

One part to be kept for minor.

SEC. 5. One part of the indenture shall be kept for the use of the minor by his parent or guardian, when executed by them respectively; and when made with the approbation of the probate judge, it shall be deposited in the probate office, and safely kept for the use of the minor.

Power of county commissioners to bind

SEC. 6. The county commissioners may bind, as apprentices or servants, the minor children of any poor person who has become actually chargeable to their county, as having a lawful setttlement therein, and also all minor children who are themselves chargeable to the county as having a legal settlement therein.

Term of indenture and provisions therein.

SEC. 7. Such children, whether under or over the age of fourteen years, may be bound—females to the age of eighteen, or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching such children to read, write and cipher, and for such other instruction, benefit and allowance, either within, or at the end of the term, as the county commissioners may think reasonable.

Ib. Indentures, how executed.

SEC. 8. No minor shall be bound by the county commissioners, unless by an indenture of two parts, sealed and delivered by the county commissioners and by the master, one part of which shall be deposited with the probate judge for the county where such minor resides, and be safely kept by him for the use of the minor.

Moneys to be paid apprentice.

SEC. 9. All consideration of money or other things paid or allowed by the master, upon any contract of service or apprenticeship, made in pursuance of this chapter, shall be paid or secured to the sole use of the minor thereby bound.

Who to inquire into treatment of apprentices.

SEC. 10. Parents, guardians, probate judges and county commissioners, shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect, and breach of covenant on the part of their masters.

Complaint against master.

SEC. 11. In case of any such misconduct or neglect of the master, a complaint may be filed by the parents, guardians, county commissioners, or other person in the Probate Court for the county in which the master resides, setting forth the facts and circumstances of the case; and the court, after having duly notified the master, shall proceed to hear and determine the cause, as the allegations of the parties may require.

Discharge of minor, costs against master.

SEC. 12. After a full hearing of the parties, or of the complainant alone, if the master shall neglect to appear, the court may render a judgment or decree that the minor be discharged from his apprenticeship or service, and for the costs of the suit against the master, and may award execution accordingly, and the minor may thereupon be bound out anew.

Costs, when against complainant, etc.

SEC. 13. If the complaint shall not be maintained, the court shall award costs for the master against the complainant or complainants, and shall issue execution accordingly; excepting that, in case of such a complaint by the county commissioners, the court shall not award costs against them, unless it shall appear that the complaint was made without any just or reasonable cause.

Master liable for breach of indenture; damages, how awarded.

SEC. 14. Every master shall moreover be liable, whether such complaint shall have been filed or not, to an action in the District Court on the indenture, for the breach of any covenant on his part therein contained; and all damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use, by the person who shall have recovered the same, and the residue, if any, shall be paid to the minor—if a male, at his age of twenty-one years, and if a female, at her age of eighteen years, or at the time of her marriage within that age.

Who may bring action.

SEC. 15. Such action may be brought either by the parent or his executors or administrators, or by the guardian, or any one who shall succeed him in that trust, or by the county commissioners, or their successors in that office, or it may be brought in the name of the minor by his guardian or next friend, as the case may require, or by himself, after the expiration of the term of the apprenticeship or service.

Ib. When not to abate.

SEC. 16. If the action be brought by the county commissioners, it shall not abate by the death of any of them, or by their being succeeded in office, but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor, and the money recovered therein shall be deposited with the probate judge, to be applied and disposed of as provided in the fourteenth section.

When to be commenced.

SEC. 17. No such action shall be maintained by the apprentice or servant, unless it be commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

Judgment for minor.

SEC. 18. If judgment in such action, by whomsoever brought, shall be rendered for the plaintiff in the District Court, the court may also, upon the motion of the plaintiff, discharge the minor from his apprenticeship or service, if it shall have not been already done in the manner before provided, and the minor may thereupon be bound out anew.

SEC. 19. If any apprentice or servant bound as aforesaid, shall

Proceedings if apprentice leave master.

unlawfully depart from the service of his master, any justice of the peace, upon complaint on oath made to him by the master, or by any one in his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before said justice; and if the complaint shall be supported, the justice may order the offender to be returned to the master, or may commit him to the common jail of the county where the master resides, there to remain for a term not exceeding twenty days, unless sooner discharged by his master, or otherwise by due course of law.

When to be returned.

Warrant.

SEC. 20. The warrant of the justice, when directed to any officer or other person by name, shall authorize him to convey the offender to the place of residence of the master, or to the jail of the county where the master resides, although it may be in any other county in this territory.

Who to pay costs.

SEC. 21. All the costs incurred in any such process against a servant or apprentice, shall be paid in the first instance by the complainant; and if the complaint be supported, the amount of costs may be recovered by the master in an action on the indenture, if the same were executed by a parent or guardian; and if recovered against a guardian, the amount paid by him in such action, may be charged by him in his guardianship account; and if the indenture were executed by the county commissioners, or by the minor, with the approbation of the probate judge, the amount of such costs may be recovered in an action against the minor, after he shall arrive at full age.

Complaint against apprentice.

SEC. 22. If any such apprentice shall be guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, his master may file his complaint in the Probate Court for the county in which he resides, setting forth the facts and circumstances of the case; and the court, after having duly notified the apprentice or servant, and all persons who have covenanted on his behalf, and also the county commissioners who shall have approved of the indenture, or their successors in that office, shall proceed to hear and determine the cause, as the allegations of the parties may require.

Discharge of master from indentures, etc.

SEC. 23. After a full hearing of the parties, or of the complainant alone, if the adverse party neglect to appear, the court may render a judgment or decree, that the master be discharged from the contract of apprenticeship or service, and for the costs of suit—such costs to be recovered of the parent or guardian of the minor, if there be any who executed the indenture, and execution therefor to be issued accordingly; and if there be no parent or guardian liable for such costs, the amount thereof may be recovered in an action against the minor after that he shall arrive at full age; and any minor discharged as aforesaid, may be bound out anew.

Death of master.

SEC. 24. No indenture of apprenticeship or service made in pursuance of this chapter, shall bind the minor after the death of his master; but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew.

Provisions of this chapter to apply to females.

SEC. 25. Any indenture of apprenticeship or service made in pursuance of this chapter, by, or in behalf of a minor, may be made

CHAP 8.

either with a woman or a man, and all the foregoing provisions shall apply as well to mistresses as to masters.

Common law right of father not affected.

SEC. 26. Nothing contained in this chapter shall prevent or affect the right of a father, by the common law, to assign or contract for the service of his children for the term of their minority or any part thereof.

Act, when to take effect.

SEC. 27. This act shall take effect and be in force from and after the first day of May.

*Passed December* 15*th*, 1853.

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## *AN ACT* TO AMEND AN ACT RELATING TO PARENTS AND CHILDREN, GUARDIANS AND WARDS, AND TO MASTERS, APPRENTICES AND SERVANTS.

SEC. 1. When probate judge to make allowance to guardian of any insane person.
2. Quarterly certificate of such amount; amount, how audited and paid.
3. Insane person, when to be confined; compensation of keeper.
4. Act when to take effect.

Allowance to guardian.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That when the relations or friends of any insane person, or any other persons, inhabitants of the county in which such insane person resides or may be found, shall apply to the probate judge, by petition in writing, to have a guardian appointed for him, in the manner prescribed in sections nine and ten of an act relating to parents and children, guardians and wards, and to masters, apprentices and servants, passed the 15th day of December, 1853, and such insane person shall have no property for his support, it shall be the duty of such probate judge to make an allowance to such guardian, of a sum sufficient to maintain the insane person, which sum may be increased or diminished by the probate judge, at the end of every period of three months, or he may discharge such guardian, and appoint another person in his stead.

Ib Certificate of payment of.

SEC. 2. The probate judge, at the end of each period of three months, shall certify what amount is due to the guardian, for supporting such insane person; and, upon receiving such certificate, the territorial auditor shall audit the same, as other accounts, and such account shall be paid out of the territorial treasury, as other debts of the territory are paid.

Keeper of jail, when entitled.

SEC. 3. Whenever any insane person shall become dangerous to the peace of society, and it shall be necessary that he should be confined, the probate judge may, if he thinks proper, direct him to be kept in the county prison, in as humane a manner as can conveniently be done; and the keeper of such prison shall be entitled to such compensation as the board of county commissioners may determine, which amount shall be certified by the probate judge, allowed by the territorial auditor, and paid out of the territorial treasury, as in case of a guardian of an insane person.

Act, when to take effect.

SEC. 4. This act shall take effect and be in force from and after its passage.

*Passed January* 30*th*, 1855.

*AN ACT* RELATING TO THE SALE OF LANDS OF MINORS AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

# CHAPTER I.

## SALE OF LANDS OF MINORS AND OTHER PERSONS

SEC. 1. When guardian may sell estate of a ward.
2. When guardian may sell and place proceeds at interest
3. Application of proceeds.
4. Investment of proceeds
5. Residue on final settlement, considered real estate.
6. Petition of guardian for license to sell.
7. Order to show cause.
8. Service thereof.
9. When certificate of county commissioners necessary.
10 Bond to be given by guardian before sale.
11. His oath.
12 Notice of sale, how given, evidence may be perpetuated.
13. As to how long a license to sell may continue
14. When foreign guardian may file his appointment of guardian, after which he may be licensed to sell.
15. Manner of conducting sale by foreign guardian
16. Where proceedings respecting sale may be instituted.
17. Residue on final settlement regarded as real estate; disposition thereof.
18. Persons objecting to license, when to pay costs
19 Limitation of suits by ward, to recover estate sold by guardian.
20 Sale not to be avoided on account of certain irregularities.
21. Liability of guardian for misconduct.
22. When sale not held void in case of adverse claimants.
23. Act when to take effect.

When guardians may sell real estate.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That when the income of the estate of any person under guardianship, whether as a minor, insane person or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Proceeds to be placed on interest.

SEC. 2. When it shall appear, upon the representation of any such guardian, that it would be for the benefit of his ward that his real estate or any part thereof should be sold, and the proceeds thereof be put out on interest, or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

Application of proceeds.

SEC. 3. If the estate be sold for the maintenance of the ward and his family, as provided in the first section of this chapter, the guardian shall apply the proceeds of the sale for that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family, in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been the personal estate of the ward.

Investment of proceeds.

SEC. 4. If the estate is sold in order to put out and invest the proceeds, as provided in the second section, the guardian shall make the investment according to his best judgment, or in pursuance of any order of the Probate Court relating thereto.

Residue, when considered as real estate.

SEC. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any remain upon the final settlement of accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons and in the same manner as the real estate would have been if it had not been sold.

Petition for license to sell.

SEC. 6. In order to obtain a license for such sale, the guardian shall present to the Probate Court of the county in which he was appointed guardian, a petition therefor, setting forth the condition of the estate of his ward, and the facts and circumstances under which it is founded, tending to show the necessity or expediency of such a sale, which petition shall be verified by the oath of the petitioner.

Order to show cause.

SEC. 7. If it shall appear to the court from such petition that it is necessary, or would be beneficial to the ward, that such real estate, or some part of it, should be sold, the court shall thereupon make an order directing the next of kin of the ward, and all persons interested in the estate, to appear before such court at a time and place to be therein specified, not less than four, nor more than eight weeks from the time of making such order, to show cause why a license should not be granted for the sale of such estate.

Service of order.

SEC. 8. A copy of such order shall be personally served on the next of kin of such ward, and on all persons interested in the estate, at least ten days before the hearing of the petition, or shall be published at least three successive weeks, in such newspaper circulating in the county as the court shall specify in such order.

When certificate of commissioners necessary.

SEC. 9. No such license shall be granted for the sale of any real estate of a ward, excepting that of a minor, unless the commissioners of the county of which the ward is an inhabitant, shall certify in writing their approbation of the proposed sale.

Bond of guardian.

SEC. 10. Every guardian licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge of probate for the county in which he was appointed, with sufficient surety or sureties, with condition to sell the same in the manner prescribed for sales of real estate by executors or administrators, and to account for and dispose of the proceeds of the sale in the manner provided by law.

His oath.

SEC. 11. Such guardian shall also, before fixing on the time and place of sale, take and subscribe an oath before the judge of probate, or some other officer competent to administer the same, in substance as follows: That in disposing of the estate which he is licensed to sell, he will use his best judgment in fixing on the time and place of sale; and that he will exert his utmost endeavors to dispose of the same in such manner as will be most for the advantage of all persons interested therein.

Notice of sale.

SEC. 12. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed for executors and administrators, and the evidence of giving such notice may be perpetuated in the same manner, and with the same effect as is provided in the case of sales of real estate by executors and administrators.

License, how long in force.

SEC. 13. No license granted in pursuance of this chapter, shall be in force for more than one year after the time of granting the same.

When foreign guardian may file copy of his appointment.

SEC. 14. When any minor, insane person, or spendthrift residing out of this territory, shall be put under guardianship in the state or county in which he resides, and shall have no guardian appointed in this territory, the foreign guardian may file an authenticated copy of his appointment in the Probate Court of any county in which there may be real estate of the ward; after which he may be licensed, by the Probate Court of the same county, to sell the real estate of the ward in any county, in the same manner and upon the same terms and conditions as are prescribed in this chapter, in the case of a guardian appointed in this territory, except in the particulars hereinafter mentioned.

Ib. May be licensed to sell.

Manner of conducting sale.

SEC. 15. Every foreign guardian, so licensed to sell real estate, shall take and subscribe the oath in the like case of guardians appointed in this territory, and shall give notice of the time and place of sale, and conduct the same in the same manner prescribed for guardians appointed in this territory, and may perpetuate the evidence of the notice in the same manner.

Where proceedings may be instituted.

SEC. 16. All the proceedings required to be had in any Probate Court in this territory, respecting such sale by a foreign guardian, shall be had in the court for the county in which the authenticated copy of his appointment is filed.

Disposition of residue.

SEC. 17. Upon every such sale by a foreign guardian, the proceeds of sale, or as much thereof as may remain upon the final settlement of the accounts of guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been, according to the laws of this territory, if it had not been sold; and the foreign guardian shall, in every case, before making the sale, give bond to the judge of probate, with sufficient surety or sureties, with condition to account for and dispose of the same according to law.

Costs, when to prevailing parties.

SEC. 18. If any person shall appear and object to the granting of any license prayed for under the provisions of this chapter, and if it shall appear to the court that either the petition or the objection is unreasonable, the court may, in its discretion, award costs for the party prevailing in the case.

Limitation of suits to recover estate sold by guardian.

SEC. 19. No action for the recovery of any estate, sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only that persons out of the territory, and minors, and others under legal disability to sue at the time when the cause of action shall accrue, may commence their action at any time within five years next after the removal of the disability, or after their return to the territory.

Certain irregularities not to avoid sale.

SEC. 20. In case of an action relating to any estate, sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings: *Provided*, It shall appear:

1. That the guardian was licensed to make the sale by a Probate Court of competent jurisdiction;
2. That he gave a bond that was approved by the probate judge;
3. That he took the oath prescribed in this chapter;
4. That he gave notice of the time and place of sale, as prescribed by law; and
5. That the premises were sold accordingly, at public auction, and are held by one who purchased them in good faith.

Liability of guardian for misconduct.

SEC. 21. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover such damage in a suit on the bond of such guardian, or otherwise as the case may require.

When sale not held void in case of adverse claimant.

SEC. 22. If the validity of any sale, made by a guardian under the provisions of this chapter, shall be drawn in question by any person claiming adversely to the title of the ward, or claiming under any title that is not derived from or through the ward, the sale shall not be held void on account of any irregularity in the proceedings: *Provided*, That the guardian was licensed to make the sale by the proper Probate Court, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

This act, when to take effect.

SEC. 23. This act shall take effect and be in force from and after the first day of May next.

*Passed December* 16*th*, 1853.

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## *AN ACT* RELATING TO ESTATES IN DOWER, BY CURTESY AND GENERAL PROVISIONS CONCERNING REAL ESTATES.

# CHAPTER I.

## ESTATES.

TITLE I. *Of Estates in Dower.*
TITLE II. *Of Estates by the Curtesy.*
TITLE III. *Of General Provisions.*

## TITLE I.

### *Estates in Dower.*

SEC. 1. Of what widows shall be endowed.
2. Dower in case of exchange of lands.
3. Dower in lands mortgaged before marriage.
4. In lands mortgaged after marriage to secure purchase-money.
5. Claim to one-third proceeds of sale in last two cases.

SEC. 6. When widow entitled to dower after deducting amount paid on mortgage.
7. Dower in lands aliened by husband, how estimated.
8 Assignment of dower by Probate Court, when right thereto is not disputed.
9 Warrant of assignment.
10 Oath of commissioners.
11. When estate consists of mill, &c., dower how assigned.
12. Widow and heirs may occupy, &c, until objected to.
13. As to how dower may be barred.
14. Settlement of jointure before marriage, with her assent, to bar dower.
15 Her assent to jointure, how evidenced.
16. Pecuniary provision in lieu of dower, when to bar it.
17. If jointure, &c., be made without her assent, she to elect.
18. If provision or devise in lieu of dower be made by will, to elect.
19. Deemed to have elected unless she sue in one year.
20. To be endowed anew in case of eviction, &c.
21. Alien or non-resident may be endowed.
22. Tenant in dower not to commit waste; to keep houses in repair, &c.
23. Widow entitled to remain in husband's house one year.
24. When to recover damages as well as dower.
25. Measure of damages, &c.
26. Not to be assessed on certain improvements.
27. Damages against heir for land aliened by him.
28. Assignment of dower in satisfaction, to bar further claim.
29. Infant heirs not to be prejudiced by collusive recovery of dower.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the widow of every deceased person shall be entitled to dower, or the use during her natural life, of one third part of all the lands whereof her husband was seised of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof.

Widow entitled to dower 10 Wen. 480; 1 Paige, 634; 2 Denio, 430; 1 Barb. 339; 5 do 324, 11 do. 592.(a)

SEC. 2. If a husband, seised of an estate of inheritance in lands, exchange them for other lands, his widow shall not have a dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such election be not evinced by the commencement of proceedings, to recover her dower of the lands given in exchange, within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

Dower in case of exchange. 7 Barb. 633.

SEC. 3. When a person seised of an estate of inheritance in lands, shall have executed a mortgage of such estate before marriage, his widow shall be entitled to dower out of the lands mortgaged, as against every person except the mortgagee, and those claiming under him.

Lands mortgaged before marriage. 1 Barb 399; 8 do. 618.

SEC. 4. When a husband shall purchase lands during coverture, and shall, at the same time, mortgage his estate in such lands, to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands as against the mortgagee, or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to dower as against all other persons.

In lands mortgaged for purchase money. 15 J. R. 461: 10 Paige, 67; 6 Cowen, 317

SEC. 5. When, in either of the cases mentioned in the two preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him, shall, after the death of her husband, cause the mortgaged

When widow entitled to dower after sale on mortgage. 8 Barb. 316.

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(a) 7 do. 260; 4 Comst. 95; 3 do. 219; 3 do. 401.

premises to be sold by virtue of such mortgage, and if any surplus shall remain, after payment of the moneys due thereon and the costs and charges of the sale, such widow shall be entitled to the interest or income of one third part of such surplus, for her life, as dower.

Dower of residue, after deducting amount paid on mortgage.

SEC. 6. If, in either of the cases above specified, the heir, or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out for her, for her dower in the mortgaged lands, the value of one-third of the residue, after such deduction.

Dower in lands aliened by husband, how estimated.

SEC. 7. When a widow shall be entitled to dower out of any lands, which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated in setting forth the widow's dower, according to their value at the time they were so aliened.

When dower may be assigned by Probate Court.

SEC. 8. When a widow is entitled to dower in the lands of which her husband died seised, and her right to dower is not disputed by the heirs or devisees, or any person claiming under them or either of them, it may be assigned to her in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled, upon application of the widow, or any other person interested in the lands; notice of which application shall be given to such heirs, devisees or other persons, in such manner as the judge of probate shall direct.

Warrant for assignment.

SEC. 9. For the purpose of assigning such dower, the judge of probate shall issue his warrant to three discreet and disinterested persons, authorizing and requiring them to set off the dower by metes and bounds, when it can be done without injury to the whole estate.

Oath of commissioners.

SEC. 10. The commissioners shall be sworn by a judge of any court of record, or a justice of the peace, faithfully to discharge their duties, and shall, as soon as may be, set off the dower according to the command of such warrant, and make return of their doings, with an account of their charges and expenses, in writing, to the Probate Court; and the same being accepted and recorded, and an attested copy thereof filed in the office of the recorder of deeds of the county where the lands are situated, the dower shall remain fixed and certain, unless such confirmation be set aside or reversed; costs on error or on appeal, and one-half of the costs of such proceedings, shall be paid by the widow, and the other half by the adverse party.

When estate consists of mill, &c, how dower assigned.

SEC. 11. When the estate, out of which dower is to be assigned, consists of a mill, or other tenement, which cannot be divided without damage to the whole, and in all cases where the estate cannot be divided by metes and bounds, the dower may be assigned of the rents, issues and profits thereof, to be had and received by the widow, as a tenant in common with the other owners of the estate.

SEC. 12. When a widow is entitled to dower in the lands of which her husband died seised, she may continue to occupy the same, with the children or other heirs of the deceased, or may receive one third part of the rents, issues, and profits thereof, so long as the heirs, or others interested, do not object, without having the dower assigned.

When widow may occupy with heirs.

SEC. 13. A married woman may bar her right of dower, in any estate conveyed by her husband, or by his guardian, if he be a minor, by joining in the deed of conveyance, and acknowledging the same, as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed acknowledged in like manner.

How dower may be barred.

SEC. 14. A woman may also be barred of her dower in all the lands of her husband, by a jointure settled on her with her assent before the marriage: *Provided*, Such jointure consists of a freehold estate in lands, for the life of the wife at least, to take effect in possession, or profit, immediately on the death of her husband.

When barred by jointure.

SEC. 15. Such assent shall be expressed if the woman be of the full age of twenty-one, by her becoming a party to the conveyance by which it is settled, and if she be under that age, by her joining with her father or guardian in such conveyance.

Evidence of her assent.

SEC. 16. Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.

When barred by pecuniary provisions.

SEC. 17. If any such jointure or pecuniary provision be made before marriage, and without the assent of the intended wife, or if it be made after marriage, she shall make her election after the death of her husband, whether she will take such jointure or pecuniary provision, or be endowed of the lands of her husband, but she shall not be entitled to both.

When to elect between jointures, &c., and dower.

SEC. 18. If any lands be devised to a woman, or other provision be made for her in the will of her husband, she shall make her election, whether she will take the lands so devised, or the provisions so made, or whether she will be endowed by the lands of her husband; but she shall not be entitled to both, unless it plainly appears by the will to have been so intended by the testator.

When between devise, &c., and dower. 5 Hill, 206; 2 Denio, 430; 4 Barb. 20.

SEC. 19. When a widow shall be entitled to an election, under either of the last two preceding sections, she shall be deemed to have elected to take such jointure, devise or other provision, unless within one year after the death of her husband, she shall commence proceedings for the assignment or recovery of her dower.

When deemed to have elected.

SEC. 20. If a woman be lawfully evicted of lands assigned to her as dower, or settled upon her as jointure, or be deprived of the provision made for her by the will or otherwise, in lieu of dower, she may be endowed anew, in like manner as if such assignment, jointure, or other provision had not been made.

When to be endowed anew.

SEC. 21. A woman being an alien, shall not, on that account, be barred of her dower; and any woman residing out of the territory shall be entitled to dower of the lands of her deceased husband,

Alien or non-resident entitled to dower.

* * *

lying in this territory, of which her husband died seised, and the same may be assigned to her or recovered by her, in like manner as if she and her deceased husband had been residents within the territory, at the time of his death.

Woman not to commit waste; to keep houses, &c., in repair.

SEC. 22. No woman, who shall be endowed of any lands, shall commit or suffer any waste on the same; but every woman, so endowed, shall maintain the houses and tenements, with the fences and appurtenances, in good repair, and shall be liable to the person having the next immediate inheritance therein, for all damages occasioned by any waste committed or suffered by her.

How long widow may remain in dwelling-house, &c. 10 Wen. 419.

SEC. 23. A widow may remain in the dwelling-house of her husband one year after his death, without being chargeable with rent therefor, and shall have her reasonable sustenance out of the estate for one year.

When to recover damages.

SEC. 24. Whenever, in any action brought for the purpose, a widow shall recover her dower in lands, of which her husband died seised, she shall be entitled also to recover damages for the withholding of such dower.

Measure of damages, &c.

SEC. 25. Such damage shall be one third part of the annual value of the mesne profits of the lands in which she shall so recover her dower, to be estimated in a suit against the heirs of her husband from the time of his death, and in suits against other persons, from the time of demanding her dower of such persons.

Not on improvements.

SEC. 26. Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband, by his heirs, or by any other person claiming title to such lands.

Damages against heirs alienating land, &c., to be deducted, etc. 2 Coms. 249.

SEC. 27. When a widow shall recover her dower in any lands, aliened by the heir of her husband, she shall be entitled to recover of such heir, in a civil action, her damages, for withholding such dower, from the time of the death of her husband, to the time of the alienation by the heir, not exceeding six years in the whole; and the amount which she shall be entitled to recover from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee; and any amount recovered as damages from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.

Claims when barred by assignment of dower 2 Coms. 245.

SEC. 28. When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower, against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned as aforesaid.

Collusive recovery not to prejudice infant heirs, etc.

SEC. 29. When a widow, not having a right to dower, shall, during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant heirs or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

## TITLE II.

### *Estates by the Curtesy.*

SEC. 30. When husband to hold as tenant by the curtesy.

SEC. 30. When any man and his wife shall be seised in her right of any estate of inheritance in lands, the husband shall, on the death of his wife, hold the lands for his life, as tenant thereof by curtesy, although such husband and wife may not have had issue born alive.

When husband to hold as tenant by the curtesy.

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## TITLE III.

### *General Provisions.*

SEC. 31. Liability of person in possession of land, out of which rent is reserved.
32. Recovery of rent; deed, evidence to prove the amount due.
33. Construction of preceding sections.
34. Determination of estate at will and by sufferance.
35. Aliens may hold, convey and demise land, &c.
36. Title of land heretofore conveyed, not to be questioned on account of alienage
37. Reversioners may sue for injury done inheritance
38 When joint tenant may maintain action against co-tenant.
39. Act, when to take effect.

SEC. 31. Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

Liability of person in possession of land, out of which rent is reserved.

SEC. 32. Such rent may be recovered in an action at law, and the deed of demise, or other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party, to prove the amount due from the defendant.

How rent recovered.

SEC. 33. Nothing contained in the two preceding sections, shall deprive landlords of any other legal remedy for the recovery of their rents, whether secured to them by their leases, or provided by law.

Construction of preceding sections.

SEC. 34. All estates at will, or by sufferance, may be determined by either party, by three months' notice in writing, given to the other party; and when the rent reserved in a lease at will is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the times of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Determination of estate at will, and by sufferance.

SEC. 35. Any alien may acquire and hold lands, or any right thereto, or interest therein by purchase, devise, or descent, and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs; and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner, and with like effect, as if such alien were a native citizen of this territory, or of the United States.

Alien may hold, convey and demise land.

Former titles not to be questioned.

SEC. 36. The title to any lands heretofore conveyed shall not be questioned, nor in any manner affected by reason of the alienage of any person, from or through whom such title may have been derived.

Remedies of reversioners, &c.

SEC. 37. A person, seised of an estate in remainder or reversion, may maintain a civil action for any injury done to the inheritance, notwithstanding any intervening estate for life or years.

Id. of joint tenants against co-tenants.

SEC. 38. Joint tenant, or tenant in common, and his executors or administrators, may maintain an action against his co-tenant, for receiving more than his just proportion of the rents or profits of the estate owned by them as joint tenants, or tenants in common.

Act when to take effect.

SEC. 39. This act shall take effect, and be in force from and after the first day of May next.

*Passed January 16th, 1854.*

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# CHAPTER I.

## OF COUNTIES.

SEC. 1. Each county to continue a body politic, and for what purposes.
2. Real estate and personal estate, when deemed property of county.
3. Agents to sell, how appointed; conveyances by.
4. Actions against county, where may be prosecuted.
5. Actions by inhabitants, where to be prosecuted.
6. Service of process.
7. Controversies, how determined.
8. Name by which county shall be sued.
9. Actions against counties that may be prosecuted before justice.
10. Costs recoverable, as in suits between individuals.
11. Execution against commissioners not to issue, except in certain cases.
12. Act when to take effect.

Each county a body politic.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That each county shall continue to be a body politic and corporate for the following purposes; to wit: to sue and be sued; to purchase and hold for the use of the county, lands lying within its own limits, and any personal estate; to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.

Real, etc., estate, when property of county.

SEC. 2. All real or personal estate heretofore conveyed, or which shall hereafter be conveyed, by any form of conveyance, and duly acknowledged and recorded, to the inhabitants of any county, or to the county treasurer, or to any committee or other persons, for the use of such county, shall be deemed the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such county by their corporate name.

Agents, to sell, how appointed.

SEC. 3. The county commissioners, or other public officers having the charge and management of the county lands, may, by their order of record, appoint agents to sell any of the real estate of their county; and all deeds made in behalf of the inhabitants of the county by such agent, under their proper hands and seals, and duly acknowledged and recorded, shall be sufficient, to all intents and purposes, to convey all the right, title and interest which the county may then have to such land so conveyed.

Actions against county.

SEC. 4. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment, in the District Court of the county against which suit is brought, or in an adjoining county, at the plaintiff's election.

Ib. By inhabitants of county.

SEC 5. All actions, whether local or transitory, brought by the inhabitants of a county, shall be brought either in the county in which the defendant lives, or in a county adjoining that by which the suit is brought; and when the defendant lives in a county adjoining that by which the action is brought, it shall be brought in an adjoining county.

Process, on whom served.

SEC. 6. When any action shall be commenced against any county, service shall be made upon the clerk of the board of county commissioners, by leaving with him a copy of the summons and complaint or declaration, and such service shall be made at least thirty days before the return day. The inhabitants of any county so sued or suing, shall be competent jurors or witnesses, if otherwise competent or qualified according to law.

Controversies.

SEC. 7. Whenever any controversy or cause of action shall exist between any of the counties of this territory, or between any county and the territory, or an individual or individuals, such proceedings shall be had, for the purpose of finally trying and settling such controversy, and the same shall be conducted in like manner, and the judgment or decree shall have the same effect, as in suits or proceedings between individuals and corporations.

Name in which county shall be sued.

SEC. 8. In all suits or proceedings by or against the county, the name in which the county shall sue or be sued, shall be "the board of commissioners of the county of (the name of the county:)" but this provision shall not prevent other county officers, when authorized by law, from suing in their name of office, for the benefit of the county.

Actions against counties, where brought.

SEC. 9. Any action in favor of or against a county, which, if prosecuted by or against an individual, could be prosecuted before a justice of the peace, may be prosecuted by or against such county, in like manner before a justice of the peace.

Costs, how recoverable.

SEC. 10. In all suits or proceedings prosecuted by or against counties, or by or against officers in their name of office, costs shall be recoverable as in suits between individuals.

Execution against commissioners not to issue, except in certain cases.

SEC. 11. When any judgment shall be recovered against the board of county commissioners of any county, or against any county officer, in an action prosecuted by or against him in his name of office, where the same should be paid by the county, no execution shall issue on such judgment, except as hereinafter provided; the same, unless reversed, shall be levied and collected as other county charges, and when so collected, shall be paid by the county treasurer, to the person in whose favor such judgment was rendered, upon the delivery to him of the proper vouchers there-

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for; but if payment be not made within thirty days after the time the collector of taxes is required by law to make his return of county taxes, next after the rendition of such judgment, then, and in that event, execution may be issued on such judgment: *Provided*, That if, at the time of the rendition of such judgment, there shall be sufficient funds belonging to the county in the treasury, it shall be the duty of the treasurer to pay the same, upon application being made to him by the person in whose favor such judgment was rendered, his agent or attorney.

Proviso.

Act when to take effect.

SEC. 12. This act shall take effect and be in force from and after the first day of May next.

*Passed January 24th*, 1854.

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AN ACT RELATING TO COUNTY COMMISSIONERS.

## CHAPTER I.

### COUNTY COMMISSIONERS.

SEC. 1. Commissioners, board of; their election, term of office, &c.
2. Division of county into districts; commissioner to be elected from each district; proviso.
3. Term of office of commissioner elected to fill vacancy.
4. Official oath of commissioner; certificate thereof to be filed.
5. Commissioners may bring and defend suits.
6. Commissioners to hold four sessions annually.
7. July session, what business to be transacted at.
8. Commissioners may hold extra sessions; sessions not to exceed three days.
9. Compensation of commissioners.
10. In case of division, question when to be postponed.
11. County auditor to be clerk of board; his duties.
12. Commissioners to use official seal.
13. General duties of county commissioners.
14. Election of chairman; effect of signature; documents how signed in his absence.
15. Commissioners to provide offices, stationery, &c., for county officers.
16. When to receive and inspect assessment roll.
17. Board of commissioners invested with superintendence of poor.
18. Power to compound debts.
19. Not to be interested in any contract for county under penalty.
20. Power to administer oaths.
21. To provide place for holding court.
22. Appeal from decision of commissioners, how and when taken.
23. Act when to take effect.

County commissioners, their number, election, etc.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be established in each organized county in this territory, a board of commissioners, to consist of three persons, having the qualifications of electors, any two of whom shall be competent to do business, to be elected by the qualified electors thereof, at the annual election, who shall hold their office for three years, except as hereinafter provided.

Division of county into districts.

SEC. 2. Each county shall be divided into three districts, numbered *one*, *two* and *three*, not subject to alteration oftener than every three years, and such districts shall be laid off by the board of commissioners of the respective counties, at their first session after the first day of May next, and in counties hereafter organized, within one year from the organization of the county; and hereafter, one commissioner shall be elected from the residents of each of such districts, by the voters of the whole county: *Provided*, That the commissioners first elected in any county in this territory, shall hold their office for the term of *one*, *two* and *three* years, and until their successors are elected and qualified, to be by them determined by lot at their first session: *Provided further*, That if any commissioner shall absent himself from the county in which he is elected for six months in succession, it shall be deemed a resignation of his office.

Commissioner to be elected from each district.

Term of office of commissioner elected to fill vacancy.

SEC. 3. Whenever it shall become necessary to elect a commissioner to fill any vacancy occasioned by death, resignation or removal, the person elected shall hold his office for the unexpired term for which his predecessor was elected, and until his successor is elected and qualified.

Official oath.

SEC. 4. Before any commissioner shall enter upon the duties of his office, he shall take and subscribe an oath or affirmation, before some person authorized to administer the same, faithfully to discharge the duties of a commissioner of the county in which he resides, and deposit a certificate thereof with the clerk of the board of commissioners of his county, to be by him filed in his office.

Commissioners may sue and be sued.

SEC. 5. The commissioners thus elected and qualified may sue and be sued, plead and be impleaded, defend and be defended, answer and be answered unto, in any court, either in law or in equity, and do and transact all business on behalf of their respective counties, that may be assigned to them by law; and, in all cases where their respective counties have been injured, or may hereafter be injured, in their goods, chattels, lands, tenements, rights, credits and effects, or contracts, such commissioners may, in their name of office, without setting out their individual names, bring any suit or suits, either in law or equity, which may be best calculated to obtain redress for such injury; and may, in like manner, and by their name of office, be sued by any person or persons having any claims against such county.

To hold four sessions annually.

SEC. 6. The board of commissioners shall hold four sessions annually, at the seat of justice of their respective counties, commencing on the first Mondays of April, July, September and December; at all of which they shall transact any business which may be required by law: *Provided*, That if the District Court be in session on any of the above mentioned days, the commissioners shall meet on the Monday preceding; but no session shall be continued for a longer period than six days.

July session.

SEC. 7. At the July session the commissioners shall examine and compare the accounts and vouchers of the county auditor and treasurer, count the funds in the treasury, and direct the auditor to publish an exhibit of the receipts and expenditures of the past year.

Extra sessions, not to exceed three days.

SEC. 8. The said board of county commissioners are hereby authorized to hold extra sessions, in case they may think the business of their county requires the same; and ten days' notice, from any two of the commissioners to the third, shall be considered a suffi-

CHAP 1. cient call for said extra sessions: *Provided*, That no such extra session shall exceed three days.

Compensation. SEC. 9. The commissioners shall each receive three dollars per day, for each and every day they may be necessarily employed in transacting the county's business, and ten cents a mile for every mile travelled, in going to and returning from the meeting of said board, or in the discharge of any official duty, to be computed by the most usually travelled route.

Question postponed in certain cases. SEC. 10. When two only of the members shall be present at the meeting of the board, and a division shall take place on any question, it shall be postponed to a subsequent meeting.

Clerk of board. SEC. 11. The county auditor shall be the clerk of the board of county commissioners, and shall attend the meetings of the board, and keep a record of the proceedings, and do such other business as he shall be required by law to do.

Official seal. SEC. 12. The commissioners of each county shall have and use a seal for the purpose of sealing their proceedings; and copies of the same when signed and sealed by said commissioners, and attested by their clerk, shall be good evidence of such proceedings in the trial of any cause in any court of this territory.

County commissioners, general duties of. SEC. 13. The several boards of county commissioners are authorized and required:

1. To provide for the erection and repairing of court-houses, jails, and other necessary public buildings for the use of the county;

2. To lay out, discontinue, or alter county roads and highways within their respective counties, and to do all other necessary acts relating thereto;

3. To license and fix the rates of ferriage; to grant grocery and other licenses, authorized by law to be by them granted;

4. To fix the amount of taxes to be assessed according to the provisions of law, and cause the same to be levied and collected;

5. To have the care of the county property, and the management of the county funds and business, except in cases otherwise provided for, and shall have no other powers, except such as are, or may be given by law.

To elect chairman. SEC. 14. The commissioners aforesaid, at their annual session in July, in each and every year, shall elect one of their members to preside at the meetings of the board, and he shall sign all documents requiring the signature of the board; and the signature of such person, as chairman of the board of commissioners, shall be as legal and binding as if the entire board had affixed their names: *Provided*, That in case such chairman shall be absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present.

To provide offices, etc., for county officers. SEC. 15. It shall be the duty of the board of county commissioners to provide offices for the sheriff, the county auditor, and clerk of the District Court, and also provide all books and stationery necessary for the use of the board of county commissioners, the office of the county auditor, the clerk of the District Court, the Probate Court and county treasurer, and also provide convenient desks for the preservation and security of the books, and other documents in the several offices.

To receive and inspect assessment roll.

SEC. 16. The board of commissioners, at their session in September in each year, shall receive and inspect the assessment roll, returned by the assessors, and if it be found correct, it shall be accepted by the board in writing, signed by the chairman and attested by the clerk, and cause the same to be filed in the office of the county auditor, where it shall remain as a matter of record, and shall be a guide for future assessors, so far as the same shall remain correct.

Superintendence of poor

SEC. 17. The boards of commissioners of the several counties of this territory, are vested with the entire superintendence of the poor in their respective counties.

Power to compound debts.

SEC. 18. The county commissioners of their respective counties, shall have power to compound for a release in whole, or in part, of any debt due to their county, and for the use thereof, when, in their opinion, the interests of the county will not be prejudiced thereby; except in cases when they, or either of them are personally interested.

No commissioner to be contractor.

SEC. 19. No county commissioner shall, directly or indirectly, as contractor, be concerned in any contract for work to be done, or materials to be furnished for the county, under the penalty of two hundred dollars, to be recovered by an action at law, for the use of the county; and such commissioner shall, moreover, forfeit any compensation he was to receive on such contract.

To administer oaths

SEC. 20. The commissioners are authorized and empowered to administer all oaths or affirmations, necessary in discharging the duties of their office.

To provide court-room.

SEC. 21. Until proper buildings are erected at a place fixed upon, for the seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

Appeal from decision of commissioners.

SEC. 22. Any person may appeal from the decision of the board of commissioners, to the next term of the District Court, of the same county; such appeal shall be taken within twenty days after such decision, and the party appealing shall notify the commissioners that the appeal is taken, at least ten days before the first day of the next term of the court appealed to; which notice shall be in writing, and shall be delivered personally to the commissioners, or left with the auditor of the county; and the party appealing shall give a bond to the county, with one or more sureties, to be approved by the county auditor, conditioned to pay all the costs which shall be adjudged against him, on such appeal, in the said District Court.

Act when to take effect.

SEC. 23. This act shall take effect, and be in force from and after the first day of May next.

*Passed January 24th*, 1854.

## *AN ACT* RELATING TO ASSESSORS.

SEC. 1. Election of assessors; qualification and term of office.
2. Bond and oath of office.
3. County auditor to give assessors assessment roll; assessment when and how made; roll what to contain; to be delivered to commissioners; lands, &c., how valued.
4. Valuation of personal property.
5. Assessor to swear tax payer; proceedings on refusing to be sworn.
6. Notice of examination of assessment roll; when and how to be given.
7. Assessor liable to penalty for neglecting to comply with such notice. Proviso.
8. Assessor to make duplicate of assessment roll; other duties of assessor.
9 Compensation of assessors.
10. Act when to take effect

Election of assessor.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That at the time of holding the general election in each year, there shall be elected in each of the counties of this territory an assessor, who shall have the qualifications of a voter as prescribed by law; and said assessors shall hold their office for one year, and until their successors are elected and qualified.

Bond and oath.

SEC. 2. The said assessors shall each, before entering on the discharge of the duties of his office, give a bond to the county for which he was elected, with two or more sureties, to be approved by the board of county commissioners, in such penal sum as such board shall direct, conditioned for the faithful performance of his duties according to law; and shall take and subscribe an oath, faithfully and impartially to discharge the duties of his office according to law, and to the best of his abilities.

Assessment roll, etc.; assessment.

SEC. 3. The assessors, after qualifying as above prescribed, shall immediately receive from the county auditor a blank assessment roll, for their respective counties, and shall, in the months of July and August thereafter, assess all the taxable property within their respective counties, and shall deliver to the board of county commissioners, on or before their session in September, next following, a full and complete assessment roll, which roll shall set forth a full and precise description of the lands, or town lots, as owned by each person therein named, which description shall correspond with the plan or plot of the original survey, or the plan or plot of any town laid out and recorded; and said lands and town lots shall be valued at their true cash value, taking into consideration the improvements on the land, and in the surrounding country, the quality of the soil, its convenience to navigation, public roads, mill privileges, and other local advantages.

Lands, etc., how valued.

Ib. Personal property.

SEC. 4. All the personal property not exempt from taxation, shall be valued at its true value in cash, and it shall be the duty of each assessor to value all improvements on claimed land within his county as personal property.

Assessor to swear tax payer.

SEC. 5. It shall be the duty of every assessor to swear every person subject to taxation, to give a true account of his or her property according to the best of his or her knowledge and belief; and should any person or persons, when so required, refuse to testify as aforesaid, the assessor shall ascertain the taxable property of such person or persons, from the best information to be derived from other sources.

Notice of examination of assessment roll.

SEC. 6. Each assessor shall give three weeks' public notice, in some newspaper printed in his respective county; if there be no such newspaper then in some newspaper in general circulation in his county, or by posting up notices in six conspicuous places in his county, setting forth that, on the last Monday in August, the assessor will attend at the office of the county auditor of his county, and, with the assistance of said auditor, will publicly examine the assessment, rolls, and correct all errors in valuations, descriptions, or qualities of lands, lots, or other property; and it shall be the duty of persons interested to appear at the time and place appointed, and if it shall appear during such examination that there is any lands, lots, or other property assessed twice, or assessed beyond its actual value, or assessed in the name of a person not the owner thereof, or any lands, lots, or other property not assessed, the auditor and assessor shall make the proper directions.

Ib Penalty if assessor neglects to comply with notice.

SEC. 7. If any person shall wilfully neglect to attend at the time and place required, he shall be liable for a violation of his duty, and suffer such fine or imprisonment, or both, as the District Court shall impose: *Provided*, That it may be competent for any assessor, in case of his being prevented by sickness, or any other unavoidable cause, as above prescribed, to appoint some suitable person, having the qualifications of a voter, his deputy, who shall perform all the duties of the assessor he represents, and for whose acts the said assessor shall be responsible; and said deputy shall, before he enters on the discharge of the duties of his office, take and subscribe before the county auditor an oath, faithfully and impartially to perform the duties devolving upon him, which oath shall be filed in the office of the county auditor.

Duplicate of assessment-roll; duties of assessor

SEC. 8. It shall be the duty of the assessor in each county, to make out and retain in his possession a duplicate of his assessment roll, and shall make the necessary corrections therein, so that such duplicate will correspond with the assessment roll on file in the office of the county auditor, and also make a plot of the government survey and town plots within his county, and note thereon the owner of each tract of land, and of each town lot, and deliver such duplicate, assessment roll and plot, and other documents relating thereto, to his successor in office.

Compensation.

SEC. 9. Each assessor shall receive a compensation of five dollars per day, for each day actually and necessarily employed in the discharge of the duties of his office, and such reasonable compensation for the copy of the assessment roll and plot of the survey, as the board of county commissioners may allow; which compensation shall be paid out of any moneys in the county treasury, not otherwise appropriated.

Act, when to take effect.

SEC. 10. This act shall take effect and be in force from and after the first day of May next.

*Passed January 26th, 1854.*

* * *

## *AN ACT* TO AMEND AN ACT RELATING TO ASSESSORS, AND "AN ACT RELATING TO THE ASSESSMENT AND COLLECTING OF TAXES."

SEC. 1. Part of prior act repealed; assessor, when to assess and deliver assessment roll.
2. When assessor to deduct certain indebtedness.
3. Sheriff, when to assess and collect taxes omitted by assessor, and how paid over.
4. Sheriff, when to remit excess of taxes assessed by assessors.
5. Last section applicable to assessment of 1854.
6. Certain personal property exempt.
7. Stock of non-residents to be assessed at cash value.
8. Sale of non-resident's stock in default of payment.
9. Act, when to take effect.

Assessment, how made.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the third section of the act, entitled "An act relating to assessors," passed January 26, 1854, is hereby amended so as to authorize and require assessors, after qualifying, as prescribed by said act, and receiving from the county auditor a blank assessment roll for their respective counties, to proceed forthwith to assess all the taxable property within their respective counties, and to deliver to the board of county commissioners, on or before their session in September next following, a full and complete assessment roll, as required by the provisions of the said third section.

Certain indebtedness deducted.

SEC. 2. Whenever any person liable to be taxed, shall comply with the provisions of the sixteenth section of the act, entitled "An act relating to the assessment and collection of taxes, passed January 27, 1854," it shall be the duty of the assessor to deduct the amount of indebtedness of such person to creditors within this territory, given under oath, from the amount of his personal property liable to taxation, and the excess only of such personal property shall be taxed.

Sheriff, when to assess.

SEC. 3. Whenever the assessor shall have omitted to assess any real or personal property liable to taxation, in his county, it shall be the duty of the sheriff, upon discovering such omission, to assess the same and collect the taxes thereon, in like manner as other assessments are made and taxes collected, and such sheriff shall return under oath, to the board of county commissioners, the amount of taxes so assessed and collected by him; and whenever sheriffs or collectors have collected any amount of taxes from persons unassessed by the county assessor, for the year 1854, they shall be required to pay the same to the treasurers of their respective counties, as other taxes are required to be paid.

Sheriff, when to remit taxes.

SEC. 4. Whenever the assessor in any county, through mistake or otherwise, shall return as taxable property a greater amount than should be assessed to any person, the sheriff may remit the excess, upon the person owning such property, or his agent, making affidavit that the same was wrongfully assessed, and giving under oath a list of all his property liable to taxation; and the sheriff shall report the name of the person and the property so illegally assessed, and shall be credited by the board of county commissioners with such excess.

Last section,

SEC. 5. The last section shall be construed to apply to property heretofore wrongfully assessed during the year 1854, and the sheriff shall remit any excess of taxes so assessed.

how construed.

Property exempt from taxation.

SEC. 6. The personal property of every householder, to the amount of three hundred dollars, the articles to be selected by such householder, shall be exempt from taxation, and the third subdivision of section four of "an act relating to the assessment and collection of taxes," is hereby repealed.

Stock of non-residents.

SEC. 7. Whenever any stock or other personal property of non-residents of this territory shall be pointed out to the assessor, by any resident householder of his county, it shall be the duty of such assessor to assess the same at its cash value; and such stock or other personal property shall be held liable for the payment of the taxes thereon, in the same manner as the personal property of resident citizens is held liable.

Sale of, when.

SEC. 8. In case no person shall volunteer to pay the tax on such property of non-residents, described in the preceding section, the sheriff or collector shall proceed, as in case of the distraint and sale of goods for taxes in other cases, to sell so much thereof as shall be sufficient to pay the taxes and costs of sale, and if the amount of the sale exceeds the amount of taxes and costs, it shall be the duty of the collector to return the excess to the county treasurer, to be held subject to the order of the owner, or his agent, or to the payment of taxes in the next succeeding year, or years, as the case may be.

Act, when to take effect

SEC. 9. This act shall take effect and be in force from and after its passage.

*Passed January 26th, 1855.*

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## *AN ACT* RELATING TO COUNTY AUDITORS.

SEC. 1. Election of auditor, term of office.
2. Auditor to be clerk of board of commissioners.
3. Election of, how conducted: proviso.
4. Oath of office to be indorsed on certificate of election; bond; duties of auditor.
5. Account current to be kept with treasurer.
6. May appoint deputy.
7. Auditor and deputy may administer oaths
8. Not to practice as attorney before commissioners.
9. May cancel county orders, and issue others in lieu.
10. In case of sickness, commissioners may appoint auditor *pro tem.*
11. Act not to apply to auditors now in office.
12. Appointment of deputy to be in writing, oath of, auditor responsible for deputy.
13. Auditor to attend meeting of board of county commissioners, as clerk.
14. Act when to take effect.

Election of auditor; term of office.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That at the first general election in each and every county organized for county purposes, and every two years thereafter, there shall be elected a county auditor, who shall have the qualifications of a voter and shall continue in his office for the period of two years, and until his successor is duly elected and qualified.

Clerk of board of

SEC. 2. The auditor shall also be clerk of the board of county commissioners.

commissioners, and recorder of deeds in the county for which he is elected.

Election, how conducted.

SEC. 3. The election provided for by this act shall be conducted, and the returns made, in the manner and form prescribed by the law regulating general elections: *Provided*, That the person or persons associated with the auditor in opening and examining the poll books, shall issue to the persons duly elected under this act, his certificate of election.

Bond and oath of office to be filed.

SEC. 4. Every auditor, within fifteen days after receiving his certificate of election, and before he shall enter upon the discharge of the duties of his office, shall take and subscribe an oath before the clerk of the District Court, or judge of probate of his proper county, faithfully and impartially to perform the duties of his office, as prescribed by law, to the best of his abilities; which oath shall be indorsed on the back of his certificate of election, recorded in a book kept for the purpose in his office, and filed in the office of the clerk of the District Court of the county; or, if there be no such officer, with the clerk of the District Court of the county to which his county may be attached for judicial purposes. He shall also give a bond to his county, with good and sufficient sureties, in the penal sum of one thousand dollars, to be approved by the county commissioners of his county, conditioned that he will faithfully and impartially fulfil the duties of his office; which bond shall be filed in the office of the clerk of the District Court of the proper county; he shall audit all accounts and demands chargeable against his county, (which are not directed to be settled and allowed by some other tribunal or person,) and present the same to the county commissioners for their inspection and allowance; and for all such sums of money allowed by the county commissioners, or such other tribunal or person; or, where the same is fixed by law, he shall issue his order on the treasurer of the county, payable to the person entitled thereto, which orders shall be numbered according to the date of their issue; and the number, date and amount of each, and to whom payable, and for what purpose drawn, shall, at the time of issuing the same, be entered in a book kept for that purpose.

To audit accounts against county, etc.

Account with treasurer.

SEC. 5. He shall keep an accurate account current with the treasurer of the county, and when any person shall deposit with him any receipt given by the treasurer, for money paid into the treasury, he shall file such receipt, and charge the treasurer with the amount thereof.

Deputy.

SEC. 6. Auditors may appoint deputies to perform the duties of auditor, and shall be liable for the official acts of such deputies.

Auditor and deputy may administer oaths.

SEC. 7. Auditors and their deputies are authorized to administer oaths necessary in the performance of their duties, and in all other cases where oaths are required by law to be administered.

Where not to practice as attorney.

SEC. 8. No person doing the duties of auditor shall practice as an attorney before the court of county commissioners.

Cancelling orders, etc.

SEC. 9. Any person may have a county order cancelled by the auditor, and two or more new orders issued in lieu thereof, by paying to such auditor the fees allowed for such services.

Appointment of auditor pro tem.

SEC. 10. In case the auditor is unable to attend to the duties of his office, during the session of the board of county commissioners, and having no deputy able to attend, some person may be deputized by such board to perform the duties of auditor for the time being.

Auditors now in office.

SEC. 11. Nothing in this act shall be so construed as to prevent the persons now discharging the duties of county auditor in any county, from continuing to perform the duties of that office during the time he would otherwise have been entitled.

Appointment of deputy.

SEC. 12. The county auditors in the several counties may appoint deputy auditors, who shall be appointed in writing, and shall, before entering upon the discharge of the duties of their office, take and subscribe an oath faithfully to perform the duties of their office, which oath shall be indorsed on the appointment, and recorded in the office of the county auditor. The county auditors shall be responsible for the acts of their deputies, and may revoke their appointment at pleasure.

Auditor to attend meetings of board of county commissioners as clerk of board.

Duty as clerk.

SEC. 13. The county auditor shall attend the meetings of the board of county commissioners of their respective counties, and do and perform all the duties imposed by law; and the clerk of said board shall keep fair books, wherein shall be entered the minutes of the proceedings of the board; shall copy into books the reports of the treasurer of the receipts and disbursements of the county, and whenever the duplicate shall be put into the hands of the collector, it shall be the duty of the county auditor to send a statement of the same, wherewith such collector stands charged, to the county treasurer.

Act when to take effect.

SEC. 14. This act shall take effect and be in force from and after the first day of May next.

*Passed January 19th*, 1854.

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## *AN ACT*, RELATING TO COUNTY TREASURER.

SEC. 1. Treasurer, how elected; his term of office
2. Oath and bond to be filed
3 As to receival and disbursement of county moneys.
4. May appoint or remove deputies
5 Office where to be kept; treasurer and deputy may administer oaths.
6 Books, how kept
7 Books subject to inspection of commissioner
8 When to pay auditor's order, proceedings if out of funds.
9. Redemption of order bearing interest, proceedings thereon
10. Orders to be redeemed according to priority of presentment.
11. Order redeemed when and where to be deposited.
12. Removal of treasurer by county commissioners
13. Annual settlements, books to be transferred to successor.
14. Compensation of treasurer.
15. Act, when to take effect.

Treasurer, how elected; term of service.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected at the annual election in each county in this territory; by the qualified voters thereof, some suitable person, being a resident of the same county, to be the county treasurer, who shall continue in office for one year, and until his successor is elected and qualified.

Oath of office and bond.

SEC. 2. The county treasurer, before he enters on the duties of his office, shall take an oath faithfully to discharge the duties of his office, as prescribed by law: he shall also, before he shall enter upon the duties of his office, give a bond to the county, with at least four freeholders residing in the county, as sureties, in a penalty to be determined by the board of county commissioners, who shall also approve the sureties to the bond.

To receive and disburse money.

SEC. 3. He shall receive all moneys due and accruing to his county, and disburse the same on the proper orders, issued and attested by the county auditor.

Deputies.

SEC. 4. County treasurers may appoint one or more deputies, and may take from them bond with sureties; may remove such deputies at pleasure, and such treasurer and his sureties shall be liable for all official acts of such deputies.

Office where to be kept; treasurer and deputy may administer oaths.

SEC. 5. The county treasurer shall keep his office at the seat of justice of his county, and shall keep the same open for the transaction of business during business hours; and he and his deputy are authorized to administer all oaths necessary in the discharge of the duties of his office.

Books how kept.

SEC. 6. He shall so arrange and keep his books, that the amount received and paid out, on account of separate and distinct funds, or specific appropriations, shall be exhibited in separate accounts, as well as the whole receipts and expenditures by one general account.

Ib. Subject to inspection of commissioners.

SEC. 7. He shall at all times keep his books and office subject to the inspection and examination of the board of county commissioners, and shall exhibit the money in his office to such board at least once a year.

When to pay auditor's orders.

SEC. 8. He shall pay all orders of the county auditor when presented, if there be money in the treasury for that purpose, and write on the face of such order, the date of redemption and his signature. If there be no funds to pay such order when presented, he shall indorse thereon, "Not paid for want of funds," and the date of such presentment, over his signature, which shall entitle such order thenceforth to draw legal interest: *Provided*, That such interest shall cease from the date of notice, by publication in some newspaper printed or circulated in his county, to be given by the county treasurer, that there are funds to redeem such outstanding orders, which notice such treasurer shall give in such case.

Redemption of orders bearing interest.

SEC. 9. When the county treasurer shall redeem any order on which interest is due, he shall note on such order the amount of interest by him paid thereon, and shall enter on his account the amount of such interest, distinct from the principal.

Ib. How redeemed.

SEC. 10. County orders shall be redeemed by the treasurer according to the priority of the time of presentment: *Provided*, Such orders payable out of the county revenue shall be received in payment of county taxes, without any regard to priority of presentment or number; but such treasurer shall not pay any balance thereon over and above such tax, when there are outstanding orders unpaid for want of funds.

SEC. 11. The treasurer shall, on the first Monday in December, March, June and September, in each year, deposit with the county auditor all county orders redeemed, who shall receipt therefor.

Orders redeemed, where and when deposited.

SEC. 12. Whenever suit shall have been commenced on the official bond of any delinquent treasurer, he may be removed by the board of county commissioners of his county.

When treasurer may be removed.

SEC. 13. The county treasurer shall annually make complete settlement with the board of county commissioners, at the regular July term thereof, and shall, at the expiration of his term, deliver to his successor all public money, books and papers in his possession.

Settlements, books to be transferred to successor.

SEC. 14. The county treasurer shall receive as a compensation for his services, two per cent. on all moneys received, and two per cent. on all moneys paid out by him for the county.

Per centage.

SEC. 15. This act shall take effect and be in force from and after the first day of May next.

Act, when to take effect.

*Passed January 19th*, 1854.

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## *AN ACT* RELATING TO CORONERS.

SEC. 1. Election of coroner, term of office and bond.
2. Coroner when to act as sheriff
3. To serve process in case sheriff a party; liability same as sheriff's.
4. Clerk, when to direct process to coroner instead of sheriff.
5. Coroner to make inquest upon view of dead body.
6 When to issue warrant to constable to summon jury; form of warrant.
7. Constable how to execute warrant, penalty for neglect; juror liable for default.
8. Oath to be administered to jury
9. Coroner may issue subpœnas; fees of witness.
10. Form of oath to be administered to witnesses
11. Testimony to be reduced to writing
12. Jury to deliver inquisition to coroner, form of inquisition.
13 When coroner to bind over witnesses, return of examination
14. Coroner to have same power as justice in certain cases.
15. Coroner to bury body of deceased stranger.
16. Justice or judge of probate may discharge duties of, in his absence.
17. Act when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That a coroner shall be elected in each organized county in this territory, for the term of two years; who shall, before he enters upon the duties of his office, give a bond to the county in a sum not less than five hundred nor more than ten thousand dollars, with two or more sureties, to be approved by the board of county commissioners. The condition of such bond shall be, in substance, the same as to be required to be given by the sheriff, except in the description of the office; and such bond shall be filed in the office of the county auditor.

Coroner, his election, term of office, bond.

SEC. 2. When there shall be no sheriff, or under-sheriff in any county, it shall be the duty of the coroner, in each county, to exer-

When to act as sheriff

cise all the powers and duties of sheriff of his county; until a sheriff shall be appointed and qualified; and when the sheriff, for any cause, shall be committed to the jail of his county, such coroner shall be keeper thereof, during the time the sheriff shall remain a prisoner therein.

When to serve process, &c.

SEC. 3. Every coroner shall serve and execute process of every kind and perform all the duties of the sheriff, when the sheriff shall be a party in the case, or whenever affidavit shall be made and filed as provided in the succeeding section; and in all such cases he shall exercise the same powers, and proceed in the same manner as prescribed for the sheriff in the performance of similar duties; and, in such cases, the coroner of any county attached to another for judicial purposes, may, in like manner, serve and execute such process and perform such duties within his own county; and, in all such cases, coroners and their sureties shall be liable in the same manner, and to the same extent, as sheriffs are made liable in similar cases.

Coroner, when to serve process.

SEC. 4. Whenever any party, his agent or attorney, shall make and file with the clerk of the District Court, an affidavit, stating that he believes the sheriff of such county will not, by reason either of partiality, prejudice, consanguinity, or interest, faithfully perform his duties in any suit, the clerk shall direct the original or other process in such suit to the coroner, who shall execute the same in like manner as the sheriff might or ought to have done.

Inquest.

SEC. 5. Coroners shall make inquest upon view of the dead body of such persons only as shall be supposed to have come to their death by violence, and not when the death is believed to have been, and was evidently occasioned by casualty.

Warrant to constable to summon jury

SEC. 6. As soon as any coroner shall have notice of the dead body of any person, supposed to have come to his death by violence, found or lying within his county, he shall issue his warrant to some constable of the county, requiring him forthwith to summon six good and lawful men of the county, to appear before such coroner at the time and place expressed in such warrant; and the warrant may be issued with or without a seal, and in substance as follows:

Form of warrant.

*Territory of Oregon,*
*County of* } *ss:*

To any constable of said county:

*Greeting:*—In the name of the United States, you are hereby commanded immediately to summon six good and lawful men of the county of , to appear before me , coroner of said county, at the dwelling-house of , or at a place called , in said county, at the hour of , then and there to inquire, upon the view of the body of , there lying dead, when, how, and by what means he came to his death. Hereof fail not.

Given under my hand, the day of , 18 .

*Coroner.*

Constable to execute warrant.

SEC. 7. The constable to whom such warrant shall be directed, and delivered, shall forthwith execute the same, and shall, at the time mentioned in the warrant, repair to the place where the dead body is, and make return thereof to the coroner, and of his doings thereon under his hand; and any constable who shall unnecessarily neglect, or fail to execute or return such warrant, shall forfeit the sum of ten dollars; and if any person summoned as a juror shall fail to appear without reasonable excuse therefor, he shall forfeit the sum of ten dollars, which forfeiture may be recovered in an action before a justice of the peace, to be brought by the coroner for the use of the county.

Penalty for neglect.

Ib. Of juror.

SEC. 8. When the jurors who have been summoned appear, the coroner shall call over their names; and then, in view of the dead body, shall administer to them the following oath:

Oath of jury.

"You solemnly swear or affirm, (as the case may be,) that you will diligently inquire, and true presentment make, on behalf of the United States of America, when, how, and by what means the person whose body now lies before you dead, came to his death, and you shall return a true inquest thereof, according to your knowledge, and such evidence as shall be laid before you—So help you God."

If the six jurors shall not appear, the coroner may require the constable, or any other person whom he shall appoint, to return jurors from the bystanders to complete that number.

Coroner may issue subpœnas.

SEC. 9. The coroner may issue subpœnas for witnesses returnable forthwith, or at such time and place as he shall direct. The persons served with such subpœnas, shall be allowed the same fees, and their attendance shall be enforced in the same manner by the coroner, and they shall be subject to the same penalties, as if they had been served with a subpœna in behalf of the United States of America, to attend a justice's court.

SEC. 10. An oath to the following effect shall be administered to the witnesses by the coroner:

Form of oath.

"You solemnly swear that theevidence you shall give to this inquest, concerning the death of the person lying here dead, shall be the truth, the whole truth, and nothing but the truth—So help you God."

Testimony to be reduced to writing.

SEC. 11. The testimony of all witnesses, examined before any inquest, shall be reduced to writing by the coroner, or some other person by his direction, and subscribed by the witnesses respectively giving it in.

Jury to deliver inquisition to coroner

SEC. 12. The jury, upon inspection of the dead body, and after hearing the testimony, and making all needful inquiries, shall draw up and deliver to the coroner the inquisition, under their hands, in which they shall find and certify when, how, and by what means the deceased person came to his death, and his name, if known, together with all the material circumstances attending his death; and if it shall appear that he was murdered, the jurors shall further state who were, if known, or were in any manner the cause of his death, which inquisition may be in substance as follows:

Form of inquisition. *Territory of Oregon,* }
*County of* } ss:

An inquisition taken at in the county of , on the day of , A. D., 18 , before , coroner of said county, upon the view of the body of , (or a person lying there dead,) by the oaths of the jurors whose names are hereunto subscribed, who, being sworn to inquire, on behalf of the United States of America, when, how, and by what means the said (or person) came to his death, upon their oaths, say, (then insert when, how, and by what person, means, weapon or instrument, he was killed.)

In testimony whereof, the said coroner and jurors of this inquest have hereunto set their hands, the day and year aforesaid.

When coroner to bind over witnesses. SEC. 13. If the jury find that any murder, manslaughter or assault has been committed on the deceased, the coroner shall bind over by recognizance such witnesses as he may deem proper, to appear and testify at the next term of the court, to be held in the same county at which an indictment for such offence can be found; he shall also return to the same court the inquisition, written evidence, all recognizances, and examinations by him taken, and may commit to the jail of the county, any witnesses who shall fail to recognize in such manner as he shall direct.

When coroner to have power of justice. SEC. 14. If any person charged by the inquest with having committed such offence, shall not be in custody, the coroner shall have the same power as a justice of the peace, to issue process for his apprehension; and such warrant shall be made returnable before any justice of the peace, or other magistrate or court having jurisdiction of the case, who shall proceed therein in the same manner, that is required of justices of the peace (or other magistrate or court, in like case.

Burial of deceased. SEC. 15. When any coroner shall take an inquest upon the view of the dead body of any stranger, or, being called for that purpose, shall not think it necessary, on view of such body, that an inquest should be taken, he shall cause the body to be decently buried, and all the expenses of the inquisition and burial shall be paid by the county in which such dead body shall be found.

Who to hold inquest in coroner's absence. SEC. 16. In case of the absence of the coroner, any justice of the peace or judge of probate, being notified of any dead body as before mentioned, shall be authorized, and they are hereby required to appoint some suitable person to hold an inquest on the same, and the person so appointed shall have the same powers that are hereby conferred on the coroner.

Act when to take effect. SEC. 17. This act shall take effect and be in force from and after the first day of May next.

*Passed January* 19*th*, 1854.

## *AN ACT* RELATING TO SHERIFFS.

SEC. 1. Election of sheriff, term of office.
2. Sheriff to collect taxes
3. Execution of bond, and oath of office.
4. Sheriff, when to qualify.
5. To appoint deputies; liability for deputy; oath of deputy.
6 Sheriff to have charge of jail and prisoners; ineligible for other office; not to practice law.
7. Raising power of county; other powers and duties of sheriff.
8 County commissioners to appoint sheriff in case of vacancy.
9. Writs, sheriff to give certificate of.
10. Proceedings against, on failure to pay over money collected; proviso.
11. When to settle with commissioners for taxes collected.
12 Not to receive more fees than allowed by law.
13. Not to purchase property sold by him on execution.
14. May finish certain business after expiration of office.
15. Sheriffs and jailers to receive and keep persons charged with crime; proviso.
16. Fees for collecting taxes.
17. Conveying prisoner through another county, &c
18 Sheriff, deputy and coroner, not to practice law; penalty for.
19. Liability of sheriff for neglect, misconduct, &c
20. When coroner to execute bond.
21. Term of sheriffs now in office not affected.
22. Act, when to take effect

Sheriff to be elected for two years.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected, at the annual election, by the qualified voters of each county in this territory, a sheriff, who shall hold his office for two years, and until his successor is elected and qualified.

Sheriff to be collector of taxes.

SEC. 2. The sheriff of each county shall be the collector of taxes in his county, and perform all the duties required by law to be performed by sheriff and tax collector respectively.

To execute bond and take an oath of office.

SEC. 3. Every person elected or appointed to the office of sheriff, shall, before entering on the duties of his office, enter into a bond to his county, in the penal sum of ten thousand dollars, with two or more sureties, residing in his county, to be approved by the board of county commissioners, and the approval indorsed thereon, conditioned that the sheriff shall well and faithfully, in all things, perform the duties of sheriff and collector of taxes, according to law, during his continuance in office, without fraud, deceit, or oppression; which bond shall be filed in the office of the county auditor. He shall also take and subscribe an oath, faithfully and diligently to perform the duties of sheriff and tax collector, during his continuance in office, and said oath shall be certified on the back of his certificate of election, and filed and recorded in the office of the county auditor.

Sheriff, when to be qualified.

SEC. 4. Every person elected sheriff in this territory, shall be qualified as prescribed by law, at the regular session of the board of county commissioners, next succeeding the day of election.

Appointment of deputies: responsible for deputy.

SEC. 5. The sheriff shall have power, under his hand and seal, to appoint one or more deputies, who are hereby empowered to perform all the duties devolving on the sheriff of the county; and the sheriff shall be responsible for all the acts of his deputy, and may remove such deputy at pleasure; but no deputy sheriff shall enter upon the duties of his office, until he has taken an oath to perform the duties of his office faithfully and impartially, and to the best of his ability; which oath shall be subscribed and certified on the back of his appointment, and filed and recorded in the office of the county auditor.

Custody of jails.

Disabilities.

SEC. 6. Every sheriff shall have the custody of the jails and prisons of his county and the prisoners in the same, and shall appoint keepers thereof, for whose conduct he shall be responsible, and whom he may remove at pleasure; and no sheriff or deputy sheriff shall hold any other civil office, except deputy marshal, nor be allowed to practice law in any court, of which he is an officer.

Raising power of county; other powers and duty of sheriff.

Duty as collector of taxes.

SEC. 7. It shall be the duty of sheriffs to keep and preserve the peace in their respective counties, for which purpose they are empowered to call to their aid such persons or power of their respective counties as they may deem necessary: they shall also pursue and apprehend all felons, and persons charged with any crime or misdemeanor, and for that purpose may execute any warrant to them directed, in any part of this territory: they shall execute all writs and other process from the justice of the peace, District Court, Probate Court, or other tribunal or person, to them directed by legal authority; they shall attend at the sessions of the District court, and they shall serve or post up all notices they may receive from the board of county commissioners, or from the county auditor; they shall give notice of a special election when notified by the county auditor, and shall notify the county commissioners when any vacancy happens in the office of county auditor; shall collect the county revenue, and pay over to the county treasurer the sums so collected and take his receipt therefor, which receipt shall be a sufficient voucher on his settlement for the taxes collected by him, and shall keep his office at the county seat, and shall generally perform all the duties which are, or may hereafter be authorized by law, to be performed by the sheriff or tax collector.

Vacancy in office, how filled.

SEC. 8. In case the office of sheriff shall become vacant, the board of county commissioners shall forthwith appoint some suitable person, (having the qualifications of a voter in the county,) to be sheriff of the county during the unexpired term, or till the next general election.

Writs, sheriff to give certificate of, &c.

SEC. 9. Every sheriff, to whom any writ shall be delivered in the county where it is to be executed, shall, if required by the person delivering the same, give to such person a certificate, under his hand, without charge, wherein the names of the parties, and the day of delivering the writ, shall be mentioned.

Proceedings, when sheriff fails to pay over money collected.

SEC. 10. If any sheriff shall fail to pay over to the county treasurer, according to law, any money which he may have collected or received, belonging to such county, or shall neglect or refuse to pay over any money he may have collected by virtue of any execution or process, or shall neglect his duties, to the injury of the county or any persons, it may be lawful for the board of county commissioners, or such person or persons entitled to receive the same, who may have been injured as aforesaid, to proceed against such sheriff, in a summary way, before the District Court by motion, by giving such sheriff three days' notice of such application, and recover the amount due, or damage done, with twenty per cent. damages thereon for such neglect, and shall have execution therefor with costs, and may proceed against such sheriff and his sureties, for such delinquency, upon his bond of office: *Provided*, That in all such cases, if the sheriff shall satisfy or pay the amount claimed by the party prosecuting, with costs, under the direction of the court before final judgment, all further proceedings on such bond shall be stayed by the court.

When to settle with commissioners for taxes collected.

SEC. 11. It shall be the duty of every sheriff in this territory, to make a settlement with the board of commissioners of his county, for the taxes and moneys collected by him, or due the county, at the April term of such board annually, and as often thereafter as he shall be required by said board; and before exhibiting his accounts to the said board for settlement, he shall have the same examined and audited by the county auditor; but the decision of the county auditor shall not be final.

Not to receive extra fees

SEC. 12. No sheriff or other officer, by color of his office, shall directly or indirectly ask, demand, or receive for any services, or acts by him performed in pursuance of any duty of (their) office, any greater or more fees than he is allowed by law, on pain of forfeiting, for such offence, to the party aggrieved, treble the sum so demanded or received, together with costs of suit.

Purchases by, forbidden. 3 Cow. 89.

SEC. 13. No sheriff shall become the purchaser, nor procure any person to become the purchaser for him of any property, real or personal, by him exposed to sale by virtue of any execution or other process; and all such purchases made by any sheriff, or any other person in his behalf, shall be absolutely null and void.

May finish certain business after expiration of his office.

SEC. 14. Every sheriff going out of office, at the expiration of his term, and having any writ of *fieri facias*, or fee bill which he may have levied, but not collected, or any tax list uncollected, shall be and hereby is authorized to proceed and collect such execution, fee bill, or tax list, in the same manner as if his office had not expired.

Sheriffs and jailers to receive and keep persons

SEC. 15. Sheriffs and jailres shall receive from any constable or other officer, without charge, and safely keep in prison, all felons indicted or taken in the fact, who shall be taken by any constable or other officer; and not of their own authority let out of prison any person in their custody, by virtue of any process, for any felony, or upon any condemnation, or committal by order of any court, or justice of the peace, upon pain of being punished by fine and imprisonment: *Provided*, That if there be no jail for the confinement of prisoners in the county, or the jail shall be insufficient, it shall be the duty of the sheriff to employ such means as may be necessary, for the safe keeping of all prisoners committed to his custody.

Fees for collecting taxes

SEC. 16. Every sheriff shall receive the following fees for collecting taxes: Four per cent. on all moneys collected by him, to be returned by him, on making payment, and he shall be credited therefor, on his settlement with the county auditor and board of county commissioners; and shall also be allowed five per cent. commission where goods are distrained, and taxes, commission and charges paid before sale; and seven per cent. on sales of distress, and charges for keeping the property distrained.

Conveying prisoner through other county.

SEC. 17. Any sheriff, or other officer, who shall have legally arrested any person in any county in this territory, may pass through any other counties that may be in the ordinary route of travel, in conveying such prisoner to the place where he is to be conveyed, according to the command of the process by virtue of which the arrest was made.

Sheriff, deputy and coroner, not to practice law, &c.

SEC. 18. No sheriff, deputy sheriff, or coroner, shall appear or practice as an attorney, solicitor, or counsellor in any court; nor shall he draw or fill up any writ, pleading, or proceeding for any party in any suit; nor shall he, with intent to be employed in the collection of any demand, or the service of any process, advise or counsel any person to commence any suit or proceeding; and either of the said officers, for a violation of any of the provisions of this section, shall forfeit a sum not exceeding one hundred dollars.

Liability of sheriff.

SEC. 19. Whenever any sheriff shall neglect to make due return of any process delivered to him to be executed, or shall be guilty of any misconduct in relation thereto, he shall be liable to fine or attachment, or both, at the discretion of the court: such fine, however, shall not exceed five hundred dollars, and he shall also be liable to an action for damages to the party aggrieved.

When coroner to execute bond.

SEC. 20. Whenever the coroner shall execute the office of sheriff, he shall perform all the duties, and be subject to all the liabilities imposed by law upon a sheriff duly elected and qualified.

Term of sheriff now in office not affected.

SEC. 21. Nothing contained in this act shall be so construed as to prevent any person, now holding the office of sheriff in this territory, from holding the same during the term for which he was elected.

Act when to take effect.

SEC. 22. This act shall take effect and be in force from and after the first day of May next.

*Passed January* 31*st*, 1854.

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## *AN ACT* RELATING TO THE ASSESSMENT AND COLLECTION OF TAXES.

## CHAPTER I.

### ASSESSMENT.

TITLE I. *Property to be Taxed.*
TITLE II. *Where and to whom Property shall be Assessed.*
TITLE III. *Of the Duties of Assessors.*
TITLE IV. *Of the Manner of Assessing Taxes.*
TITLE V. *Of the Collection and Return of Taxes.*
TITLE VI. *Of the Sale for Unpaid Taxes, and the Conveyance and Redemption thereof.*
TITLE VII. *Miscellaneous Provisions.*

# TITLE I.

## *Property to be Taxed.*

SEC. 1. What property liable to taxation.
2. Definition of term "real property."
3. Definition of term "personal property."
4. Property exempt from taxation.
5. Poll tax, how assessed.

Taxes, how assessed.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That all taxes for the support of the government of this territory shall be assessed on polls, and on property valued in equal and ratable proportion; and all property, real and personal, within this territory, not expressly exempted therefrom, shall be subject to taxation in the manner provided by law.

Term, "real property," defined.

SEC. 2. The terms "real property" and "land," wherever used in this act, shall be held to mean and include not only the land itself, whether laid out into town lots or otherwise, with all things contained therein, but also all buildings, structures, improvements, trees, and other fixtures of whatever kind thereon, and all rights and privileges belonging or in any wise appertaining thereto.

Ib. "personal property," defined.

SEC. 3. The terms "personal estate" and "personal property," shall be construed to include all household furniture, goods, chattels, moneys and gold dust, on hand or on deposit, either within or without this territory; all boats and vessels, whether at home or abroad, and all capital invested therein; all debts due or to become due from solvent debtors, whether on account, contract, note, mortgage or otherwise; all public stocks, and stocks or shares in all incorporated companies, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

Property exempt from taxation.

SEC 4. The following property shall be exempt from taxation:

1. All property, real and personal, of the United States, and of this territory;

2. All public or corporate property of the several counties, cities, villages, towns and school districts, in this territory, used or intended for corporate purposes;

3. The household furniture of every head of a family, to the amount of three hundred dollars;

4. The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this territory, and such real estate belonging to such institutions, as shall be actually occupied for the purposes for which they were incorporated;

5. All houses of public worship, and the lots on which they are situated, and the pews or slips, and furniture therein, and all burial grounds, tombs and rights of burial; but any part of any building, being a house of public worship, which shall be kept or used as a store or shop, or for any other purpose, except for public worship or for schools, shall be taxed upon the cash valuation thereof, the same as personal property, to the owner or occupant, or to either; and the taxes shall be collected thereon in the same manner as taxes on personal property; * * *

6. All public libraries, and the real or personal property belonging to or connected with the same;

7. The property of all Indians, who are not citizens, except lands held by them by purchase;

8. The personal property of all persons, who by reason of infirmity, age or poverty, may, in the opinion of the assessor, be unable to contribute toward the public charges.

Poll tax.

SEC. 5. A poll tax shall be assessed upon every white male inhabitant of this territory, between the ages of twenty-one and fifty years.

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## TITLE II.

### *Where and to whom Property shall be Assessed.*

SEC. 6. Where land to be assessed.
7. Land of incorporated companies, where to be assessed.
8 Undivided estate of deceased persons to be assessed to heirs, &c., without name.
9. Persons, when and where to be taxed for personal estate.
10. Goods, wares, stock in trade, &c., to be taxed where same may be.
11. Partners may jointly or separately be taxed.
12 Personal estate of corporations, where to be taxed.
13. When owner of stock not to be taxed for same.
14. Personal property pledged, &c., to whom to be assessed.

Where assessed.

SEC. 6. All lands shall be assessed in the county in which the same shall lie, and every person shall be assessed in the county where he resides, when the assessment is made for all real and personal property, then owned by him within such county; but land owned by one person and occupied by another, may be assessed in the name of the owner or occupant; and unoccupied land, if the owner is unknown, may be assessed as such without inserting the name of any owner.

Property of corporations 4 Paige, 384; 1 Barb. Ch. 455.

SEC. 7. The real estate of incorporated companies liable to taxation, shall be assessed in the county in which the same shall lie, in the same manner as the real estate of individuals.

Undivided estate of deceased person, how assessed.

SEC. 8. The undivided estate of any deceased person may be assessed to the heirs or devisees of such person, unless occupied by some other person to whom it may be assessed, without designating them by name, until they shall have given notice to the assessor of the division of the estate, and the names of the several heirs or devisees; and each heir and devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs and devisees, their respective proportions thereof, when paid by him.

Ib. Personal estate.

SEC. 9. Every person, except as provided in the succeeding section, shall be assessed in the county in which he resides, when the assessment is made for all taxable personal property owned by him, including all personal estate in his possession or under his control, as trustee, guardian, executor or administator; and where there are two or more persons jointly in possession, or having the control of any such property in trust, the same may be assessed to either or all such persons; but it shall be assessed in the county where the same shall lie, if either of such persons reside in such county.

Goods, &c., to be taxed where same may be.

SEC. 10. All goods, wares and merchandize, kept for sale in this territory; all stock employed in any of the mechanic arts; and all capital and machinery employed in any branch of manufactures, or other business, within this territory, owned by a corporation out of this territory, or by any persons whether residing in or out of the territory, shall be taxable in the county where the same may be, either to the owners thereof, or to the person who shall have charge of, or be in possession of the same.

Partners, how taxed.

SEC. 11. Partners in mercantile or other business may be jointly taxed in their partnership name, or severally taxed for their individual shares, for all personal property employed in such business; and in case they are jointly taxed, such partner shall be liable for the whole tax.

Property of corporations.

SEC. 12. All the stock and personal estate of every incorporated company, liable to taxation, unless otherwise provided, shall be assessed in the name of the company, in the county where the principal transacting financial business office or place shall be; and if such company have no such office or place of transacting financial business, then in the county where its operations shall be carried on; and in collecting any tax on any such stock or personal estate, the personal estate of any such company may be seized and sold, the same as that of individuals; and in case no such property belonging to the company can be found sufficient to satisfy the tax and legal charges, then the personal property of any member thereof may be taken and sold to pay the same.

Personal property of corporator liable.

When owner of stock not to be taxed for same.

SEC. 13. The owner or holder of stock in any incorporated company which is taxed on its capital, shall not be taxed as an individual for such stock.

Property pledged, &c. deemed property of pledgee.

SEC. 14. When personal property is mortgaged or pledged, it shall, for the purpose of taxation, be deemed the property of the person who has the possession.

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## TITLE III.

### *Duties of Assessors.*

SEC. 15. When assessor to make assessment roll and appraisal.
16. Assessor may require tax payer to furnish list of his taxable property in territory.
17. Assessment roll, what to contain.
18. City or village in which lots are situated, to be specified.
19 Where person assessed is trustee, &c., how assessment to be entered.
20. When boundaries to be given.
21. Lands may be described by letters and abbreviations
22. Unoccupied lands of unknown persons, how to be described.
23. Assessment roll, how made out.

Assessment and appraisal.

SEC. 15. At the time prescribed by law, the assessor in each county shall ascertain, by diligent inquiry, the names of all persons liable to taxation in his county, and also all the taxable personal property, and all taxable real estate therein; and make out an assessment roll of all taxable property, and appraise the same, according to the provisions of the statutes relating thereto.

List of property.

SEC. 16. Every assessor shall require any person liable to be taxed in his county, to furnish him a list of his real estate, situate in his county liable to taxation, and a list of all his personal property, liable to taxation, in this territory, and shall require such person to make oath that, to the best of his knowledge and belief, such list contains a full and true account of all his property liable to be taxed in such county; and if any person shall refuse to furnish such list, or to swear to the same, when required so to do by the assessor, such person shall forfeit and pay to the assessor, for the use of the county, the sum of twenty dollars, which sum may be recovered by motion in any court having jurisdiction of matters of debt or contract, to the amount of twenty dollars.

Assessment roll. 3 Denio, 117; 5 Barb. 608; 7 do. 638.

SEC. 17. The assessor shall set down in the assessment roll, in separate columns, and according to the best information he can obtain:

1. The names of all the taxable persons in his county;

2. A description of each tract or parcel of land to be taxed, specifying, under separate heads, the township, range and section in which the land lies; or, if divided into lots and blocks, then the number of the lot and block;

3. The number of acres and parts of an acre, as near as the same can be ascertained, unless the land be divided into blocks and lots;

4. The full cash value of each parcel of land taxed;

5. The full cash value of all the taxable personal property owned by, or to be taxed to, such person, as provided by law;

6. The total valuation of all property taxed, real and personal.

Location of lot to be specified.

SEC. 18. When lots are situated in any city, village, or town, a plat of which shall have been recorded, the city, village, or town, in which the same are situated, shall be specified in the assessment roll.

Trustee, guardian, &c.

SEC. 19. When any person is assessed as trustee, guardian, executor, or administrator, a designation of his representative character shall be added to his name; and such assessment shall be entered in a separate line from his individual assessment, and he shall be assessed for the real estate, held by him in such representative character, at the full value thereof, and for all personal property held by him in such representative character.

Description by boundaries.

SEC. 20. If the land assessed be less, or other than a subdivision according to the United States survey, unless the same be divided into lots and blocks, so that it can be definitely described, it shall be described by giving the boundaries thereof, or in such other manner as to make the description certain.

What description sufficient.

SEC. 21. It shall be sufficient to describe lands in all proceedings relative to assessing, advertising, or selling the same for taxes, by initial letters, abbreviations and figures to designate the township, range, section, or parts of a section, and also the number of the lots and blocks.

Ib. Of unoccupied lands of unknown persons.

SEC. 22. Unoccupied lands, liable to taxation, when the name of the owner is unknown, shall be described, and the value thereof set down in the assessment roll, in a part thereof separate from the other assessments, in the same manner that lands of residents are required to be described, and the value thereof designated.

Assessment roll.

SEC. 23. The assessment roll shall be made out in tabular form, in separate columns, with appropriate heads, after the manner specified below, with such additional columns as may be deemed necessary, varying the same as circumstances may require, but, as nearly as convenient, in the following form:

Its form.

# ASSESSMENT ROLL

*For the county of——, and territory of Oregon, for the year* 185 *, containing all the taxable property, real and personal, in said county.*

| NAMES OF PERSONS TAXED. | DESCRIPTION OF LAND. | SECTION. | TOWNSHIP. | RANGE EAST OR WEST. | NUMBER OF ACRES. | VALUATION OF REAL ESTATE. | VALUATION OF PERSONAL PROPERTY. | TOTAL VALUATION OF ALL PROPERTY. | AMOUNT OF TAXES | REMARKS. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

TITLE 4.

## LOTS

*In the City, (Town or Village,) of ——, described according to the Map thereof, on record in the Office of the Recorder of Deeds of said County.*

| NAMES OF PERSONS TAXED. | NUMBER OF LOTS. | BLOCKS. | VALUATION OF EACH LOT. | VALUATION OF ALL THE LOTS. | VALUATION OF PERSONAL PROPERTY. | TOTAL VALUATION. | AMOUNT OF TAX. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

## TITLE IV.

### *Of the Manner of Assessing Taxes.*

SEC. 24. When county commissioners to examine and correct assessment roll.
25 County commissioners, when to estimate and apportion amount of taxes to be raised.
26. Power of commissioners to levy taxes for county purposes; levy, when to be made.
27. Ib. territorial purposes
28 Auditor, when to transmit certified copy of assessment roll to territorial auditor
29. Duty of auditor on receiving same.
30. County auditor to make certificate of taxes to be raised; certificates, to whom to be delivered; warrant attached to assessment roll.

Examination of assessment roll, &c., by commissioners.

SEC. 24. The board of commissioners of each county shall, at their session in September in each year, examine the assessment roll of their county, and shall have power to correct the same, make alterations in the description of lands or other property upon such roll, when it shall be necessary to render such description conformable to the requirements of this chapter; and may make any other alterations or corrections in such roll, as they shall deem necessary to make the same conform to the requirements of this chapter.

Estimates by commissioners.

SEC. 25. The board of commissioners of each county shall, at their session in September in each year, estimate and determine the amount of moneys to be raised in their county for county purposes, and apportion such amount, together with the amount of territorial and school tax required by law to be raised in their county, according to the valuation of taxable property in their county, for a year; and such determination shall be entered at large in their records.

Tax for county revenue.

SEC. 26. For the purpose of raising a revenue for county purposes, the board of county commissioners of each county in this territory shall, at their session in September in each year, levy a tax on all taxable property in their county, which tax shall be sufficient in amount to defray the expenses of the county.

And territorial purposes

SEC. 27. In addition to the tax required to be laid by the preceding section, the board of county commissioners shall, at the same time they are required to levy a tax for county purposes, levy a tax of one mill on the dollar upon all taxable property of their county for territorial purposes, which last mentioned tax shall be added to the county tax, and collected at the same time, and in the same manner.

Copy of assessment roll to territorial auditor

SEC. 28. Within thirty days after the assessment roll of any county has been examined, corrected and approved by the board of county commissioners, the county auditor shall transmit to the territorial auditor a certified copy thereof, under the seal of the board.

Duty of auditor on receiving same

SEC. 29. It shall be the duty of the territorial auditor, on receiving such copies of the assessment rolls, to estimate the amount of tax to be collected in each county for territorial purposes, and make a statement thereof, and carefully preserve the same in his office, and he shall also deliver a certified copy of such statement to the territorial treasurer, who shall record the same in a book kept for that purpose, and the territorial treasurer shall also charge the respective counties with the amount of tax so ascertained to be raised in each.

Auditor to make certificates of taxes leviable, for treasurer and sheriff.

SEC. 30. The county auditor shall, within fifteen days after such apportionment, make out two certificates of the several amounts apportioned, to be assessed upon the taxable property of the county, for territorial, county and school purposes, one of which he shall deliver or cause to be delivered to the county treasurer, and the other, with a transcript of the assessment roll aforesaid, shall be delivered to the sheriff of the county, to which certificate and assessment roll thus delivered, shall be attached a warrant in the name of the United States, under the hand of the county auditor, and with the seal of the board of county commissioners thereto attached, commanding the said sheriff to collect the taxes charged in such transcript, by demanding payment of the persons charged therein, and making sale of the goods and chattels mentioned in such transcript, or any other goods and chattels of the respective persons

Warrant attached to roll.

charged therein, if necessary; and that he pay over the moneys collected by him, by virtue of said warrant, to the county treasurer, and return said warrant together with the transcript of the roll aforesaid, and an account of his acts thereon, to the board of county commissioners, on or before the first Monday in April next ensuing the date thereof.

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## TITLE V.

### *Of the Collection and Return of Taxes.*

SEC. 31. Sheriff to give notice of collection; notice, how given, default of tax payer.
32. County orders payable for taxes to a certain amount; territorial tax to be paid in specie
33. No officer to purchase county orders at a discount.
34. Sheriff, on payment of tax, to give receipt, &c.; penalty for false return.
35. If tax unpaid, sheriff to levy same by distress and sale.
36. Notice of time and place of sale to be given: sale.
37. If purchase-money not paid, sheriff may resell or sue for same.
38. Proceeds of property distrained cannot be sold.
39. Surplus, in case of sale, to be returned to owner.
40. Double assessment, how collected and returned.
41. How return of unpaid taxes to be made of lands doubly assessed, &c.
42. Form of return.
43. Affidavit to be made and annexed to return; sheriff to be credited, &c., his fees for making return.
44. Upon settlement, amount of delinquent taxes to be credited to sheriff.
45. Sheriff liable to indictment in case of defalcation.
46 Territorial tax, where and when to be paid.

Notice of collection by sheriff; default of tax-payer, &c.

SEC. 31. The sheriff must give fifteen days' notice of the time and place he will attend, in each election precinct, for the purpose of collecting the taxes, by advertisement at some public place therein; and if any person residing in such precinct fails to attend at the day and place, and pay his tax, he may pay the same within thirty days at the county seat of justice, to the sheriff or his deputy; and if he fail to pay within thirty days, and the sheriff visits his residence, the sheriff may collect of such person, for his own use, mileage, as in other cases.

County orders, when receivable.

Territorial tax to be paid in specie.

SEC. 32. County orders shall be payable for county taxes, in the county where issued, and shall be allowed the sheriff, on his settlement of county taxes with the board of county commissioners, but no sheriff shall receive a larger amount of county orders than the amount of county taxes in his county; and the sheriff shall, in all cases, pay over to the county treasurer the full amount of territorial and school taxes in gold and silver coin.

Officers not to purchase county orders at discount.

SEC. 33. No county treasurer, sheriff, auditor or commissioner shall, either directly or indirectly, purchase or receive in payment of taxes, or in exchange or otherwise, in any manner whatever, any county orders, or any demand against his county for a claim allowed, (by the proper officer to allow the same,) during his term of office, for a less amount than that expressed on the face of such order or demand, and any such person so offending shall, on conviction thereof, be fined in a sum not less than one hundred, nor more than three hundred dollars.

Sheriff to give receipt.

Penalty for false return.

SEC. 34. The sheriff shall, on payment to him of any tax, if required, give a receipt for the same, therein describing the lands, or specifying the amount of personal property on which the same is paid, and shall note on his tax roll, the payment thereof; and if any such sheriff shall wilfully return, as unpaid, any tax which has been paid to him, he shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment not more than six months, or by fine not exceeding five hundred dollars, or both, in the discretion of the court.

Levy by distress.

SEC. 35. In case any person shall refuse or neglect to pay the tax imposed on him, the sheriff shall levy the same by distress and sale of the goods and chattels of such person, wherever the same may be found within his county.

Notice of sale, sale; redemption.

SEC. 36. The sheriff shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisement, to be posted up in three public places in the county where such sale shall be made; and the sale shall be at public auction, in the day time, and the property sold shall be present; but, at any time previous to the sale, the owner or claimant of such property may release the same by the payment of taxes, interest and charges, for which the same is liable to be sold.

Resale or suit for purchase money

SEC. 37. Whenever the purchase money on such sale shall not be paid at such time as the sheriff shall require, he may, in his discretion, again expose the property for sale, or sue, in his name of office, such purchaser for the purchase money, and recover the same with costs, and twenty per cent. damages.

Proceedings if distress cannot be sold.

SEC. 38. If property distrained for taxes, cannot be sold for want of bidders, the sheriff shall return a statement of the facts; and the tax, if unsatisfied, shall be collected in the same manner as if no levy had been made.

Surplus after sale.

SEC. 39. If the property distrained shall be sold for more than the taxes, costs and damages, the surplus shall be paid to the owner of such property.

Double assessment.

SEC. 40. When any sheriff discovers that any land has been assessed more than once for the same year, he shall collect only the tax justly due thereon, and shall make return of the balance as a double assessment, and he shall be credited therefor by the county commissioners.

Return of unpaid taxes and double assessments.

SEC. 41. If any of the taxes mentioned in the tax list annexed to his warrant, either on real or personal estate, shall remain unpaid, and the sheriff shall be unable to collect the same, he shall make out a statement of the taxes so remaining unpaid, distinguishing, by setting down separately, such as are on real, and such as are on personal estate, with a full and correct description of such real estate from his tax roll, and the name of the person taxed, if therein specified, and submit the same, by the first day of February after the date of the tax list, to the county auditor; he shall also include in such statement a description of any land doubly assessed, and the amount of taxes thereon; and the county auditor

TITLE 5

shall carefully compare such statement with the tax roll, to ascertain that the same is correct.

SEC. 42. The return of the sheriff to the county auditor, of delinquent taxes, shall be made in a tabular form, and may be varied as the facts may require; but, when so made, shall be as nearly as may be in the following from:

## RETURN

Form of return.

*Of ———, Sheriff of the county of———, and Territory of Oregon, containing a description of the lands and taxes thereon, and the valuation of personal property, and taxes thereon, (if any,) assessed in said county, in the year ——, which taxes remain due and unpaid for the year herein specified, to wit:*

| NAMES OF PERSONS TAXED. | DESCRIPTION OF LAND, AND STATEMENT OF PERSONAL PROPERTY. | SECTION. | TOWNSHIP. | RANGE. | NO. OF ACRES. | AMOUNT OF TAX. | YEAR FOR WHICH TAXES ARE DUE. | REMARKS. |
|---|---|---|---|---|---|---|---|---|
| | | | | | | $ cts. | | |
| A. B. | W. half of N.E. qr. | 34 | 3 | 19 | 80 | 5 60 | 1833 | |
| C. D. | Undivided two thirds of N.E. qr. | 34 | 3 | 19 | 160 | | | |
| Do unknown. | Do. | 34 | 3 | 19 | 320 | | | |
| A. B. | Personal property.<br>Valuation, $3,000. | | | | | | | |

A. B., *Sheriff of County.*

Affidavit to be made and annexed to return; sheriff to be credited, &c., his fees for making return.

SEC. 43. The sheriff shall then make an affidavit, to be annexed to such statement, before any officer authorized to administer oaths, that the facts set forth in such statements are correct; that the sums therein returned as unpaid are not paid; and that he has not, upon diligent inquiry, been able to discover any goods or chattels belonging to the persons charged with such unpaid taxes, whereon he could levy the same: which statement and affidavit shall be filed with the county auditor, and he shall thereupon be credited by the county auditor with the amount of taxes, so returned as unpaid and doubly assessed, and he shall be entitled to receive three dollars for making such return, and ten cents per mile travel for one way.

Delinquent taxes to be credited sheriff

SEC. 44. Upon settlement, as aforesaid, of the amount of taxes to be collected by the sheriff and paid into the county treasury, the county auditor shall make out duplicate certificates, in which shall be contained the amount of the delinquent taxes—one of which shall be given to the sheriff, and the other to the treasurer of the county; and such certificate shall be evidence of the truth of the matter contained therein; and the amount of the delinquent tax, as certified by the said auditor, shall be passed to the credit of the sheriff, by the county treasurer.

Defalcation of sheriff indictable.

SEC. 45. Any sheriff who shall neglect or refused to pay over all moneys by him collected for taxes, or shall refuse or neglect to make a return of the delinquent taxes of his county, as required in this chapter, shall be liable to be indicted therefor; and, upon conviction on such indictment, may be punished by fine, in any sum not less than one hundred, nor more than two thousand dollars, or by imprisonment not less than six months, nor more than three years, or by both such fine and imprisonment, at the discretion of the court

Territorial tax, where and when payable.

SEC. 46. On or before the first Monday in February in each year, the several county treasurers in this territory shall pay over to the territorial treasurer, in gold and silver coin, the amount of territorial taxes charged to their respective counties, which territorial tax shall be paid out of the first moneys collected and paid into the county treasury.

## TITLE VI.

### *Of the Sale for Unpaid Taxes, and the Conveyance and Redemption thereof.*

SEC. 47. When land liable to be sold for taxes
48. Personal property may be sold within three years for taxes
49. County auditor to give notice of sale, notice, what to contain.
50. Notice to be published and posted four weeks prior to sale
51 Printer to transmit affidavit of publication.
52. County auditor to make affidavit of posting notice, and keep affidavits
53. Sale, when to commence and how long to continue
54. Land, how sold and who deemed purchaser.
55 Auditor may require immediate payment for land sold.
56. If land not sold, to be re-offered, and, if still unsold, to be bid off for county.
57 Lands bid off for county, liable to taxation, but not to sale.
58. County auditor to deed to county certain lands not redeemed.
59. Commissioners may authorize sale of tax certificates and land bid off for county at tax sales.
60 Land sold for taxes need not be sold as land of any particular person.
61. Auditor to give purchaser certificate of sale.
62. Auditor, when to file statement of sale.
63. Unredeemed land to be advertised, notice, what to contain.
64. Ib If no newspaper in the county notice to be posted.
65 Lands may be redeemed within three years, proviso.
66. On redemption, all taxes, charges, &c, paid by purchaser, to be paid in certain cases.
67. When lands of minors and married women may be redeemed.
68. Upon redemption, auditor to execute certificate; countersigned by treasurer.
69 Auditor to pay over redemption money, &c.
70. When, if certificate is lost, commissioners may cause deed to be executed to owner.
71. If certificate be lost, and land be redeemed, how owner may draw redemption money.

* * *

SEC. 72 If land unredeemed, when auditor to execute deed to purchaser.
73. When auditor to withhold deed and certificate, and to refund amount paid.
74. When board may refund purchase money.
75. When uncollected tax on land may be collected the succeeding year.
76 If taxes be improperly assessed, may be refunded within two years.
77. Taxes to be a lien on land.
78. After the close of land sale, auditor to file statement with treasurer and pay over to him all moneys paid at such sale.
79. Penalty if auditor neglects his duty.

When liable to be sold.

SEC. 47. All lands returned to the county auditor, as provided by this chapter, upon which the taxes, interest and charges shall not be paid by the first day of February next after the return thereof, shall be subject to sale as hereinafter provided.

Ib. Personal property; within three years.

SEC. 48. The county auditor may, at any time within three years after the return by the sheriff of any delinquent taxes, assessed on personal property, make out a warrant, with a list of such delinquent taxes upon personal estate annexed thereto, which warrant shall command the sheriff to proceed to collect the delinquent taxes enumerated in such list; and, upon receiving such warrant, the sheriff shall proceed to collect and make return of the same, in the same manner, and under the same responsibilities as in the collection and return of the taxes mentioned in the original tax list.

Notice of sale by auditor.

SEC. 49. The county auditor shall, immediately after the first day of February in each year, make out a statement of all such lands, containing a brief description thereof, with an accompanying notice, stating that so much of each tract, or parcel of land, described in said statement, as may be necessary for that purpose, will, on the second Monday of April next thereafter, and the next succeeding days, be sold by him, at public auction, at some public place that he may select, (naming the same,) at the seat of justice of the county, for the payment of the taxes, interest and charges thereon; and if, in any county, no seat of justice shall have been established, then at such public place therein as he shall select.

Notice to be published and posted four weeks prior to sale.

SEC. 50. The county auditor shall cause such statement and notice to be published in a newspaper printed in his county, if there be such newspaper, and if there be none, then in a newspaper printed in an adjoining county, if there be such newspaper printed therein; but if there be no newspaper printed in the same or an adjoining county, then such statement and notice shall be published in some newspaper printed at the seat of government of the territory, which statement and notice shall, in all cases, be published once a week, for four successive weeks, prior to said second Monday of April, and such auditor shall, also, at least four weeks previous to said day, cause to be posted up copies of said statement and notice, in at least four public places in such county, one of which copies shall be posted upon some conspicuous place in his office.

ffidavit of ublication.

SEC. 51. Every printer who shall publish such statement and notice, shall, immediately after the last publication thereof, transmit to the county auditor of the proper county, an affidavit of such publication, made by some person to whom the fact of publication shall be known; and no printer shall be paid for publishing any such statement and notice, who shall fail to transmit such affidavit within six days after the last publication thereof.

Affidavit of auditor, &c.

SEC. 52. The county auditor shall also make, or cause to be made, an affidavit or affidavits, of the posting of such statement and notice, as above required—which affidavit, together with the affidavit of publication, shall be carefully preserved by him, and deposited as hereinafter specified.

Commencement and continuance of sale

SEC. 53. On the day designated in the notice of sale, the several county auditors shall commence the sale of those lands on which the taxes, interest and charges shall not have been paid, and shall continue the same from day to day, (Sundays excepted,) until so much of each parcel thereof shall be sold, as shall be sufficient to pay the taxes, interest and charges thereon; and all moneys received on such sale, shall be paid into the county treasury.

Who deemed purchaser; land how sold.

SEC. 54. The person at such sale offering to pay the taxes, interest and charges on any tract or parcel of land, for the least quantity thereof, shall be the purchaser of such quantity, which shall be taken from the north side or end of such tract or parcel, and shall be bounded on the south by a line running parallel with the northerly line thereof, if such line be a single straight line, otherwise, the south line of the portion so sold shall run due east and west; and in case no bid shall be made for the payment of the taxes, interest and charges, on any such tract or parcel of land, for a portion thereof, then the whole of such tract or parcel shall be sold.

Auditor may require immediate payment.

SEC. 55. The county auditor may, in his discretion, require immediate payment of every person to whom any parcel of such land shall be struck off, and, in all cases when payment is not made in twenty-four hours after the bid, he may declare such bid cancelled and sell the land again, or may sue the purchaser for the purchase money, and recover the same with costs and twenty per cent. damages; and every person so neglecting or refusing to make payment, shall not be entitled, after such neglect, to have any bid made by him received by the county auditor, during such sale.

Unsaleable land, when to be bid off for county.

SEC. 56. If any parcel of land cannot be sold for the amount of taxes, interest and charges thereon, it shall be passed over for the time being, but shall, before the close of the sale, be re-offered for sale; and if the same cannot be sold for the amount aforesaid, the county auditor shall bid off the same for the county for such amount.

Lands so bid off liable to taxation, but not to sale.

SEC. 57. All lands bid off for the county, as provided in the preceding section, shall continue liable to be taxed in the same manner as if they were the lands of individuals; and such taxes, and the interest and charges thereon, shall be a lien on such lands, and shall be paid out of the county treasury, while such lands belong to the county, but no land so bid off for the county, shall be offered for sale for any taxes levied thereon subsequent to such bid, until it shall have been redeemed, or shall be sold by the county, or the tax certificate, issued by the county, shall have been assessed.

* * *

When to be conveyed to county.

SEC. 58. When any lands, so bid off for any county, shall not be redeemed as provided by law, the county auditor shall execute to the county, in his official name, a deed of release therefor, witnessed and acknowledged in like manner as deeds to individuals, which shall have the same force and effect as conveyances executed by said auditor to individuals for land sold for taxes.

Commissioners may authorize sale of tax certificates, and lands bid off for county.

SEC. 59. The board of commissioners of any county may, by an order to be entered on their records, authorize the county auditor, or any other person, to sell and assign the tax certificate issued for lands bid off for such county, and also to sell and convey by deed, duly executed and delivered, by such auditor or other person, under his hand and seal, for such county, any such lands for which a deed of release has been executed in the same, as provided in the preceding section.

Sale of lands by misnomer of owner, &c.

SEC. 60. When any land is offered for sale for taxes, it shall not be necessary to sell the same as the property of any particular person, and if it should be sold as the property of any particular person, no misnomer of the owner, or supposed owner, or other mistake respecting the ownership of such lands, shall ever affect the sale, or render it void or voidable.

Auditor to give purchaser certificate of sale, &c.

SEC. 61. The county auditor shall give to each purchaser on the payment of his bids, and if the same be struck off to the county, then to the county, a certificate in writing, dated the day of the sale, describing the land purchased, the amount paid therefor, and the time when the purchaser will be entitled to a deed; which certificate shall be assignable, and any person's interest therein may be transferred by a written assignment, indorsed upon or attached to the same; and such assignment shall have the same force and effect as the assignment of bonds for the conveyance of lands; and such certificate, if acknowledged by the county auditor, and certified by a person authorized to take the acknowledgment of deeds, may be recorded in the office of the recorder of deeds of the proper county.

Auditor to file statement of sale, &c.

SEC. 62. Every county auditor shall, immediately after the close of any sale of land for taxes, deposit in his office all affidavits, notices and papers in relation to such tax sale, to be filed and preserved therein; also a statement, containing a particular description of each tract and parcel of land so sold by him, specifying the name of the person to whom sold, the amount for which the same was sold, and the name of the owner if known; and the said auditor shall record such statement in a book to be kept by him for that purpose in his office.

Unredeemed lands, how advertised.

SEC. 63. The county auditor in each county shall, at least six months before the expiration of the time limited by law for redeeming lands sold for taxes, cause to be published in a newspaper printed in his county, if there be such newspaper, and if none, then in a newspaper printed in an adjoining county, if there be one; but if there be no newspaper printed in the same or an adjoining county, then a newspaper printed at the seat of government, once a week for twelve successive weeks, a list of all unredeemed lands, specifying each tract or lot, the name of the person to whom assessed, if any, and the amount of taxes charged and interest (calculated to the last day of redemption) due on each parcel, together with a notice that unless such lands be redeemed on or before the day limited therefor, specifying the same, they will be conveyed to the purchaser.

Ib If there be no newspaper in county.

SEC. 64. If no newspaper be published in such county, the county auditor shall, at least three months previous to the time limited for the redemption of any lands sold for taxes, cause to be posted up copies of the list and notice specified in the preceding section, in at least four public places in his county; one of which copies shall be posted up in some conspicuous place in his office.

May be redeemed within three years.

SEC. 65. The owner or occupant of any lands sold for taxes, or any person for him, may, at any time within three years from the date of the certificate of sale, redeem the same, or any part thereof, or interest therein, by paying to the county auditor of the county where such land was sold, for the use of the purchaser, his heirs or assigns, the amount for which such land was sold, and all subsequent charges thereon authorized by the provisions of this act, or such portion thereof as the part or interest redeemed shall amount to, with interest on the amount of the purchase-money, at the rate of twenty per cent. per annum, from the date of such certificate; but, whenever any land sold for taxes shall be redeemed within six months after the sale thereof, interest as aforesaid shall be paid for six months; *Provided, however*, That in all cases any such person may, in like manner, redeem any such land, or any part thereof, or interest therein, at any time before the tax deed executed on such sale is recorded; and, when so redeemed, such deed shall be void.

Proviso.

Terms of redemption.

SEC. 66. The person wishing to redeem any land sold for taxes, in addition to the amount to be paid by him as specified in the preceding section, shall, before the same shall be redeemed by him, pay all other taxes and charges imposed on the land, or the part thereof, or the interest therein, sought to be redeemed subsequent to such sale, and paid by such purchaser or his assigns prior to redemption, with interest thereon, at twelve per cent. per annum: *Provided*, Vouchers or other evidence of the payment of such last named taxes and charges, shall have been deposited with the county auditor of the county where such land is situate, or produced to such owner or other person seeking to redeem.

When lands of minors, married women, &c., may be redeemed.

SEC. 67. The lands of minors, or any interest they may have in lands sold for taxes, may be redeemed at any time before such minor becomes of age, and during two years thereafter; and the lands of idiots, insane persons, and married women, so sold, or any interest they may have therein, may be redeemed at any time within five years after such sale, and such redemption shall be made in the same manner as provided in the last two preceding sections.

Certificate of auditor on redemption; to be countersigned.

SEC. 68. Upon the redemption of any land sold for taxes, by payment to the county auditor, such auditor shall execute to the person so redeeming, a certificate, specifying therein the name of the purchaser, the land redeemed, and the amount of the redemption money paid; and such auditor shall, also, enter on the sale list kept by him, the name of the person redeeming, the sum paid therefor by him, and the time when paid; which certificate, before it shall be evidence of such redemption, shall be presented to the treasurer of the same county, and be countersigned by him; and he shall also make a similar entry on the sale list kept by him, with that above required to be made by such county auditor.

Auditor to pay over redemption money.

SEC. 69. The county auditor shall, on the demand of any person entitled to any redemption money in his hands, forthwith pay the same to such person; and at the expiration of his term of office, shall pay over to his successor in office all redemption money in his hands.

Loss of certificate.

SEC. 70. Whenever any certificate given by the county auditor for lands sold for taxes shall be lost, or wrongfully withheld from the owner, and such lands shall not have been redeemed, the board of county commissioners may receive evidence of such loss or wrongful detention, and, on satisfactory proof of the fact, may cause a deed as aforesaid to be executed to such person as may appear to them the rightful owner of the land described in such certificate; but no such deed, if wrongfully or improperly granted, shall be binding on the county in respect to any of its covenants, nor shall it vest any right, title, or interest, in the grantee or his assigns.

If certificate be lost and land redeemed, how owner may withdraw redemption money.

SEC. 71. If there shall be a loss or wrongful detention of any such certificate, and the land therein described shall have been redeemed, any person may exhibit to the county treasurer evidence of such loss or detention, and upon his making the same satisfactorily appear to such treasurer, and upon his executing to him a bond with sufficient security to be approved by the treasurer, that such person will refund such redemption money, with twelve per cent. interest thereon, if any person shall thereafter show his right thereto, such treasurer shall pay such redemption money to the person so executing such bond.

When auditor to execute deed to purchaser.

SEC. 72. If any land sold for taxes shall not be redeemed as aforesaid, the county auditor of the county where the same was sold shall, after the expiration of the time prescribed by law for the redemption thereof, on the presentation to him of the certificate of sale, execute in the name of his county, as the clerk of the board of county commissioners, under his hand and seal, to the purchaser, his heirs and assigns, a deed of the land so remaining unredeemed, and shall acknowledge the same, which shall vest in the grantee an absolute title in fee simple in such lands, subject, however, to all unpaid taxes and charges, which are a lien thereon, and to redemption, as provided in this act; and such deed, duly witnessed and acknowledged, shall be *prima facie* evidence of the regularity of all proceedings, from the valuation of the land by the assessor inclusive, up to the execution of the deed, and may be recorded with the like effect as other conveyances of land.

Ib. When to withhold deed.

SEC. 73. If the county auditor shall discover, before the sale as aforesaid, that on account of irregular assessments, or for any other errors, any such lands ought not to be sold, he shall not offer the same for sale, and if after any certificate shall have been granted, upon the sale of the same as aforesaid, the county auditor shall discover that, for any error or irregularity, the lands so sold ought not to be conveyed, he shall not convey the same, and the county treasurer shall, on demand, refund the amount paid therefor on such sale, and all subsequent taxes and charges paid thereon by the purchaser or his assigns, out of the county treasury.

When purchase money to be refunded.

SEC. 74. If, after the conveyance of any land sold for taxes, it shall be discovered that the sale was invalid, the board of county commissioners shall cause the money paid therefor on the sale, and all subsequent taxes and charges paid thereon by the purchaser or his assigns, to be refunded, upon the redelivery of the deed to be cancelled, and no recovery shall ever be had against the county on the covenants of such deed.

Taxes omitted, collectable following year.

SEC. 75. Whenever, on account of any erroneous or defective description of any land, or any other error or defect, if such land were justly taxable, the same shall have been stricken from the assessment roll, or shall have been omitted to be sold at any tax sale, or, when so sold, the county auditor shall withhold the tax deed therefor, as provided by law, the board of commissioners shall cause such land to be correctly described, and such uncollected tax to be entered upon the assessment roll of the next succeeding year; but if such lands cannot be correctly described, or if, from any other cause, the tax so unpaid cannot be collected on the same, the said board shall correct such error as they shall deem best.

Improper assessments refundable within two years.

SEC. 76. If any person, within two years after the payment of any tax by him, can satisfactorily show to the board of county commissioners, that the same was improperly assessed, or was paid by mistake, or was not legally chargeable, the said board shall order the same to be repaid by the county treasurer.

Taxes, a lien on land.

SEC. 77. All taxes assessed on any tract or parcel of land, and all costs, charges, and interest thereon, shall be a lien on such land until paid; and all costs and expenses which shall accrue jointly, or in the aggregate, on two or more parcels of land, shall be apportioned in equal parts upon the several tracts or parcels.

Statement of sale and payment of proceeds by auditor to treasurer.

SEC. 78. Each county auditor shall, immediately after the close of any tax sale of land, under the provisions of this chapter, make out a full and accurate statement of all lands sold by him for taxes, describing therein each tract or parcel so sold by him, and the amount for which the same was sold, and the amount of money received by him on such sale, which statement shall be verified by the oath of the county auditor, and filed in the office of the county treasurer; and the said auditor shall also, immediately after such sale, deposit the amount by him received, on such sale, with the said treasurer; and the said auditor shall also semi-annually make out a statement of all moneys received by him for redeeming lands sold for taxes, and file the same with the county treasurer on or before the first Monday in October and April of each year; and also at the same time deposit all redemption moneys then in his hands, and which shall have remained in his hands, unclaimed by the persons entitled thereto, for the period of six months, with said treasurer.

Semi annual statement.

Penalty for neglect.

SEC. 79. Whenever any county auditor shall neglect or refuse to comply with the provisions of the preceding section, he shall be deemed guilty of a misdemeanor; and, on conviction thereof, shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not exceeding one year, or shall be both fined and imprisoned, in the discretion of the court.

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## TITLE VII.

### *Miscellaneous Provisions.*

SEC. 80. Persons having liens on land may pay taxes and collect same.
81. When tenant may recover taxes paid by him, and how.
82. If auditor fail to sell land at time fixed, when may afterwards sell same.
83. If auditor fail to advertise unredeemed lands, may do so within five years.
84. When suit to recover lands sold for taxes to be commenced.
85. Penalty on sheriff if he fail to pay over, &c, moneys collected.
86 Person injured by false return of sheriff, to recover double damages
87. Deed invalid if taxes have been paid.
88. Moneys collected for specific object, not to be applied to any other object.
89. Penalty for officer neglecting certain duties.
90. Penalty on treasurer for neglecting to pay territorial tax when required.
91. When grantor shall pay the taxes, and when grantee
92. Treasurer's books and warrant, &c., to be evidence.
93. Auditor of territory to transmit blanks and instructions to county auditor.
94. Fees of officers and printers for services required by this chapter.
95. Act when to take effect.

Lien holders may pay taxes and collect the same.

SEC. 80. Any person who has a lien by mortgage or otherwise, upon any land on which the taxes have not been paid, may pay such taxes, and the interest and charges thereon; and the receipt of the person authorized to receive such tax shall constitute an additional lien on such land to the amount therein specified, and the additional interest thereon; and the amount so paid and the interest thereon shall be collectable with, as part of, and in the same manner as the amount secured by the original lien.

Taxes paid by tenant, how recovered.

SEC. 81. When any tax on any real estate shall have been paid by or collected from any occupant or tenant, when there is some other person who, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover, by action, the amount which such person should have paid, with interest thereon; or he may retain the same out of any rent due or accruing from him to such person, for real estate on which such tax is so paid.

Omitted sale, how remedied.

SEC. 82. If the county auditor shall, in any year, unavoidably omit or fail to sell any lands returned for delinquent taxes, at the time fixed in this chapter, he shall advertise and sell such lands on the second Monday in September next ensuing, and such advertisement and sale shall conform in all respects to the provisions of this chapter, and shall be as valid and binding as like sales made on the second Monday in April.

If auditor fail to advertise unredeemed lands, may do so within five years.

SEC. 83. Whenever the county auditor shall fail to advertise the list of unredeemed land sold for taxes, within the time above specified therefor, the same may be advertised as provided in sections sixty-three and sixty-four of this chapter, at any time thereafter within five years from the time the same were sold, and when so advertised, such auditor shall deed the same, in like manner, and with the same effect, as though they had been advertised within the time specified in the sixty-fourth section of this chapter.

Suit to recover, &c., when to be commenced.

SEC. 84. Any suit or proceeding for the recovery of lands sold for taxes, except in cases when the taxes have been paid on the land redeemed, as provided by law, shall be commenced within three years from the time of recording the tax deed of sale, and not thereafter.

Penalty if sheriff fail to pay over, &c.

SEC. 85. If any sheriff shall fail to make settlement of the taxes included in his assessment roll, within the time required by this chapter, the county treasurer shall charge such sheriff five per cent. damages, and twelve per cent. interest per annum, from the day payment should have been made on the balance of unsettled taxes due from him; and if any sheriff shall withhold the payment of any public moneys collected or received by him after the same should be paid, and shall have been demanded, he shall be liable to pay ten per cent. damages, and twelve per cent. interest, as above specified, on such moneys: which moneys, damages and interest, may be collected by suit upon the sheriff's bond, for the recovery of the same.

Remedy of person injured by false return.

SEC. 86. If any person shall be injured by the false return or fraudulent act of any sheriff, such person shall recover, upon suit brought on the bond or lien of such sheriff, and his sureties, double damages and costs of suit.

Deed, when invalid.

SEC. 87. No sale of land for taxes, and no deed made in pursuance thereof, shall be of any validity, if the taxes, for which the same are sold, shall have been paid prior to such sale.

Moneys collected for one object, not to be applied for another.

SEC. 88. Whenever any moneys shall have been collected or received by any officer, for any distinct and specified object, no portion of them shall be paid or applied to any other object or purpose without due authority, but shall be kept a separate fund for such specified object; and any officer failing to comply with the provisions of this section, shall be liable to a fine not exceeding five hundred dollars, or to imprisonment in the county jail not exceeding six months.

Penalty for neglect.

SEC. 89. Any officer who shall neglect or refuse to perform any of the duties imposed on him by this chapter, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

If treasurer neglect to pay territorial tax.

SEC. 90. Whenever any county treasurer shall fail to pay into the territorial treasury, any money in his hands for that purpose, at the time prescribed by law, he shall, in addition to the other penalties, be liable to the following: If he shall so fail for the space of ten days, he shall forfeit to the territory twenty per cent. on the amount withheld; and if he shall fail to pay over such moneys for the space of thirty days after such specified time, he shall forfeit his office as treasurer, and be deemed a public defaulter.

When grantor liable to pay tax.

SEC. 91. As between the grantor and grantee of any land, when there is no express agreement as to which shall pay the taxes that

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may be assessed thereon before the conveyance, if such land is conveyed at the time, or prior to the date of the warrant authorizing the collection of such taxes, then the grantee shall pay the same; but if conveyed after that date, the grantor shall pay them.

Treasurer's books, warrant, &c., evidence.

SEC. 92. The entries made in the county treasurer's books, the assessment rolls, and the warrants thereto attached, and the lists of lands sold for taxes, recorded by said treasurer, or by the county auditor, shall be *prima facie* evidence in all judicial proceedings.

Auditor of territory to transmit blanks, &c.

SEC. 93. The auditor of the territory shall, from time to time, as he may deem proper, cause to be printed blank assessment rolls, and other forms for proceedings required by this chapter, and shall transmit the same, together with such instructions as he shall think useful, to the several county auditors in this territory, who shall distribute the same to the assessors of their several counties.

Fees.

SEC. 94. In addition to any fees elsewhere specially allowed for the services to be performed under the requirements of this chapter, the following shall be allowed, to wit: To the county auditor for any deed of land sold for taxes, one dollar and fifty cents; for each additional parcel of land described therein after the first, twenty cents; to the person taking and certifying the acknowledgment of the same, fifty cents; to said auditor for a certificate of redemption, fifty cents; for each additional parcel of land described therein after the first, twenty cents; to the county auditor for a certificate of sale of lands, one dollar; for each additional parcel of land described therein after the first, twenty cents.

Ib.

The county auditor granting such deed or certificate, shall include therein as many parcels of land bid off, owned or redeemed by any person as he may desire, and the above fees shall be paid by such person. To the printers who shall publish any notice of the time when the redemption of land sold for taxes will expire, for each lot or tract of land, twenty-five cents for all the insertions; for drawing affidavit of publication, twenty-five cents; to the person taking and certifying the same, twenty-five cents.

Fees how apportioned.

The fees for publication shall be apportioned equally upon the several parcels of land advertised, and all costs, charges and interest, imposed by the provisions of this chapter, and paid upon any land, shall be a lien thereon until paid equally with the unpaid taxes.

Act when to take effect.

SEC. 95. This act shall take effect and be in force from and after the first day of May next.

*Passed January 27th*, 1854.

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## *AN ACT* RELATING TO TERRITORIAL AND SCHOOL TAXES.

SEC. 1. County commissioners to levy tax.
2. Tax, how collected.
3. Certain enactment hereby repealed.
4. Act, when to take effect.

Tax of one and a half mills.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the board of county commissioners of each and every county in this territory, shall, at the same time they are required to levy a tax for county purposes, levy a tax of one and a half mills on the dollar upon all taxable property of their county for territorial purposes, which shall be collected at the same time and in the same manner as county taxes are required to be collected.

Ib How collected.

SEC. 2. That a tax of one mill on the dollar on all taxable property in the several counties, shall be levied for school purposes at the same time, and collected in the same manner, as county and territorial taxes are required to be levied and collected under the provisions of law.

Acts repealed.

SEC. 3. That so much of section 27, chapter 1, of an act relating to assessment and collection of taxes, passed January 27, 1854, and so much of the second section of chapter 1, of an act relating to common schools and school lands, passed January 12th, 1854, as conflicts with the provisions of this act, are hereby repealed.

Act to take effect.

SEC. 4. This act shall take effect and be in force from and after its passage.

*Passed January 30th*, 1855.

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## *AN ACT* TO REGULATE THE TREASURY DEPARTMENT.

# CHAPTER I.

## ORGANIZATION OF THE DEPARTMENT.

SEC 1. Establishment of treasury department
2. Treasurer and auditor to reside and keep office at the seat of government
3. Treasurer and auditor to be commissioned by governor; their oath and bonds.
4. Penalty for acting before being qualified.
5. Bond to be approved by governor, amount and nature thereof
6. Approval of governor to be indorsed thereon, bond to be filed by secretary.
7. Commission not to issue till bond be given
8. Auditor and treasurer to keep a seal, papers duly authenticated by them evidence

Establishment of.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That a separate department is hereby established, to be called the treasury department, which shall embrace the offices of the territorial treasurer, and the auditor of public accounts.

Office of, where to be kept.

SEC. 2. The treasurer and auditor shall reside and keep their respective offices at the seat of government.

Oath and bond to be indorsed on commission.

SEC. 3. The treasurer and auditor shall be commissioned by the governor, and, before entering upon their respective duties, shall take an oath of office, before any judge or justice of the peace, prescribed by the laws of this territory, and shall cause the same to be indorsed on their respective commissions, and shall respectively give the official bonds required by law.

Penalty for acting before being qualified.

SEC. 4. If the treasurer or auditor shall perform any official act before complying with the requirements of the preceding section, he shall forfeit and pay five hundred dollars for the use of the territory.

CHAP 2.

Bond. SEC. 5. The treasurer shall, immediately after his appointment, execute and deliver to the governor a bond to the territory, in the sum of twenty-five thousand dollars, with not less than five sureties, to be approved of by the governor, conditioned to the faithful performance of all the duties required, or which may be required of him by law; and the auditor shall in like manner execute his bond in a sum not less than ten thousand dollars, with not less than three sureties.

Approval by governor. SEC. 6. The governor shall indorse on the bond his approval thereof, stating the time of approval, and deliver the same to the secretary of the territory, who shall record and keep the same in his office.

Commission when to issue SEC. 7. No commission shall issue to any auditor or treasurer, until he has given bond and surety as required by law.

Auditor and treasurer to keep seal. SEC. 8. The treasurer and auditor shall each keep a seal of office, which shall be used to authenticate all writings, papers and documents required by law to be certified from either of said officers respectively; and copies of all papers and documents lawfully deposited in either of said offices, when certified by the officer, and authenticated by the seal of office, shall be received in evidence in the same manner, and with the like effect as the original.

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# CHAPTER II.

## OF THE AUDITOR—HIS GENERAL DUTIES.

SEC. 1. Auditor, accountant of territory, keeper of public accounts, &c.
2. As to his annual report.
3. As to his duties generally.

His duties. SECTION 1. The auditor of public accounts is declared to be the general accountant of the territory, and the keeper of all public account books, accounts, vouchers, documents, and all papers relating to the accounts and contracts of the territory, and its revenue, debt and fiscal affairs, not required by law to be placed in some other office, or kept by some other person.

Report. SEC. 2. It shall be the duty of the auditor to digest, prepare, and report to the Legislative Assembly, at the commencement of each annual session:

1. A full and detailed statement of the condition of the revenues, and the amount of the expenditures for the last fiscal year;
2. A full and detailed statement of the public debt;
3. Estimates of the revenue and expenditures for the next succeeding year;
4. Such plans as he may deem expedient for the support of public credit; for lessening the public expenses; for using the public money to the best advantage; for promoting frugality and economy in public offices; and generally, for the better management and more perfect understanding of the fiscal affairs of the territory;
5. A tabular statement, showing separately the whole amount of each appropriation of money made by law, the amount paid under the same, and the balance unexpended.

6. A tabular statement, showing separately the whole amount of money received into the treasury, from all sources, in the preceding fiscal year; the amount received from each county, and each source of revenue in each county.

SEC. 3. It shall be the duty of the auditor:

Duties

1. To audit, adjust and settle all claims against the territory, payable out of the treasury, except only such claims as may be expressly required by law to be audited and settled by other officers or persons;
2. To draw all warrants upon the treasury for money, except only in cases otherwise expressly provided by law;
3. To express, in the body of every warrant which he may draw upon the treasury, the particular fund appropriated by law, out of which the same is to be paid;
4. To audit, settle and adjust the accounts of all collectors of the revenue, and other holders of public money, who are required by law to pay the same into the treasury;
5. To keep an account between the territory and the territorial treasurer;
6. To keep an account of all debts and credits between the territory and the United States;
7. To direct prosecutions in the name of the territory, for all official delinquencies in relation to the assessment, collection and payment of the revenue, against all persons who, by any means, become possessed of public money or property, and fail to pay over or deliver the same, and against all debtors of the territory;
8. To procure from the proper officers an abstract and description of all taxable lands within the territory, not yet procured, and annually, hereafter, abstracts and descriptions of such lands as shall become taxable;
9. To transmit to the clerk of each county commissioners' court, annually, a descriptive list of all taxable lands in such county;
10. To give information, in writing, to either house of the Legislative Assembly, whenever required, upon any subject relating to the fiscal affairs of the territory, or touching any duty of his office;
11. To perform all such other duties as may be required by law.

# CHAPTER III.

## THE AUDITOR—OF THE SETTLEMENT OF CLAIMS AND ACCOUNTS

SEC 1. Collectors, &c, when to exhibit accounts; auditor to adjust and report balance due to treasurer.
2. Penalty if collectors do not pay treasurer balance due, within ten days after settlement.
3. Claims within what time to be exhibited, when set-off against territory allowed
4. Power of auditor to administer oaths, and issue summons for purposes of settlement
5 Auditor to preserve all accounts, vouchers, &c., and give authenticated copies.
6 When to draw warrants on treasury.
7. Decision of auditor, when to be referred to Assembly for approval.
8 Duty of auditor in case no appropriation is made for legal claims.
9. Auditor, when to report to Legislative Assembly a list of unsettled accounts
10. Salary of auditor, by whom audited, and how paid.

CHAP. 3.

Collectors, &c., when to exhibit accounts.

SECTION 1. All collectors of the revenue, and others bound by law to pay money directly into the treasury, shall exhibit their accounts and vouchers to the auditor, on or before the first Monday in March, in each year, to be audited, adjusted and settled; and the auditor shall proceed, without any unnecessary delay, to audit, adjust and settle the same, and report to the treasurer the balance found due.

Failure of collectors to pay treasurer moneys ascertained to be due.

SEC. 2. If any of the persons mentioned in the preceding section, shall fail to pay the amount so found due, into the treasury, and produce the treasurer's receipt to the auditor within ten days after the settlement above required, the delinquent shall forfeit to the territory the amount of his commission allowed him by law, and also two and a half per cent. a month, on the amount wrongfully withheld, to be computed from the time the same ought to have been paid until actual payment; and the auditor shall charge such delinquent accordingly; and the whole amount of principal and forfeiture may be recovered by action on the official bond of the delinquent or otherwise, according to law.

Claims, within what time to be exhibited.

SEC. 3. All persons having claims against the territory, shall exhibit the same, with the evidence in support thereof, to the auditor, to be audited, settled and allowed, within two years after such claim shall accrue, and not afterwards. And in all suits brought in behalf of the territory, no debt or claim shall be allowed against the territory, as a set-off, but such as have been exhibited to the auditor, and by him allowed or disallowed; except only in cases where it shall be proved to the satisfaction of the court, that the defendant, at the time of trial, is in possession of vouchers which he could not produce to the auditor; or that he was prevented from exhibiting the claim to the auditor, by absence from the territory, sickness or unavoidable accident.

May administer oaths, issue summons, &c.

SEC. 4. The auditor, whenever he may think it necessary to the proper settlement of any account, may examine the parties, witnesses and others, on oath or affirmation, touching any matter material to be known in the settlement of such account; and for that purpose may issue writs of summons, and compel witnesses to attend before him, and give evidence in the same manner, and by the same means, allowed by law to courts of record.

To preserve accounts.

SEC. 5. All accounts, vouchers and documents, settled or to be settled by the auditor, shall be preserved in his office; and copies thereof, authenticated by the official seal, shall be given to any person interested therein who shall require the same.

Warrants on treasury.

SEC. 6. In all cases of grants, salaries, pay and expenses ascertained and allowed by law, found due to individuals from the territory, when audited, the auditor shall draw warrants upon the treasury for the amount, in the form used in the treasury department; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrant shall be drawn by the auditor or paid by the treasurer, unless the previous appropriation shall have been made by law for that purpose; nor shall the whole amount drawn for and paid under any one head, ever exceed the amount thus appropriated.

SEC. 7. If any person interested shall be dissatisfied with the decision of the auditor, on any claim, account or credit, it shall be the duty of the auditor, at the request of such person, to refer the same, with the reasons for his decision, to the Legislative Assembly. Decision referred to Assembly.

SEC. 8. In all cases where the laws recognize a claim for money against the territory, and no appropriation shall be made by law to pay the same, the auditor shall audit and settle the same, and give the claimant a certificate of the amount thereof, under the official seal, if demanded; and shall report the same to the Legislative Assembly, with as little delay as possible. Legal claims without appropriation.

SEC. 9. The auditor shall report to the Legislative Assembly, within ten days after the commencement of each regular session, a list of all collectors of the revenue, and other holders of public money, whose accounts remain unsettled for six months after they ought to have been settled according to law, and the reasons therefor. Report of unsettled accounts.

SEC. 10. The auditor shall receive an annual salary of three hundred dollars, to be audited by the territorial treasurer, and paid by him out of any moneys in the treasury not otherwise appropriated. Salary.

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# CHAPTER IV.

## OF THE TREASURER.

SEC 1. His duties.
2 To grant duplicate receipt, one of which to be given auditor.
3. Compensation of treasurer.

SECTION 1. It shall be the duty of the territorial treasurer:

1. To receive and keep all the moneys of the territory, not expressly required by law to be received and kept by some other person; His duties.
2. To disburse the public moneys upon warrants drawn upon the treasury according to law, and not otherwise;
3. To keep a just, true and comprehensive account of all moneys received and disbursed;
4. To keep a just and true account of each head of appropriation made by law, and the disbursements under the same;
5. To render his account to the auditor for settlement quarterly, or oftener if required;
6. To report to each house of the Legislative Assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of the treasury, and its operations for the preceding year;
7. To give information in writing to either house of the Legislative Assembly, whenever required, upon any subject connected with the treasury, or touching any duty of his office;
8. To perform all such other duties as may be required by law.

SEC. 2. The treasurer shall grant duplicate receipts, under the seal of his office, for all sums of money which shall be paid into the treasury: and the person receiving the same shall deposit one of them with the auditor, who shall credit such person accordingly, Duplicate receipts.

and charge the treasurer with the amount: *Provided*, That if one of such duplicate receipts be not deposited with the auditor as aforesaid, within two days after the same is received from the treasurer, any person so receiving such duplicate, shall forfeit and pay to the territory an amount equal to ten per cent. of the amount paid into the treasury on such receipt.

Compensation.

SEC. 3. The treasurer shall receive, as a compensation for his services, two per cent. on all moneys received, and two per cent. on all moneys disbursed by him in his official capacity, to be audited by the auditor, and retained by said treasurer from any moneys in the treasury not otherwise appropriated.

## CHAPTER V.

### MISCELLANEOUS PROVISIONS.

SEC. 1 & 2. When governor may appoint treasurer and auditor; their salary.
3. Legislature shall cause settlement of former incumbent's accounts.
4 Treasurer and auditor may administer oaths, &c.
5 Auditor and treasurer to have access to all offices to inspect accounts.
6. Auditor and treasurer to keep letter book.
7. Penalty for auditor issuing illegal warrant on treasurer.
8. Penalty for treasurer refusing to pay warrant.
9. Penalty if treasurer or auditor be guilty of illegal conduct in office.
10. Audited account due territory, a lien on debtor's lands.
11. Act, when to take effect.

When governor may appoint treasurer or auditor.

SECTION 1. In case of death, sickness, absence from the territory, resignation, removal from office, or impeachment of any auditor or treasurer, it shall be lawful for the governor to make an appointment, for the time being, of some suitable person to perform the duties of such office, until a successor can be appointed according to law, or until such absence or disability shall cease.

Salary of officer appointed.

SEC. 2. Any person appointed by the governor, in virtue of the preceding section, shall receive the same compensation allowed by the law to the officer whose duty he is appointed to perform, in proportion to the time he shall be engaged in such service.

Settlement of former incumbent's account.

SEC. 3. Immediately after the appointment and qualification of any auditor or treasurer, the Legislative Assembly, if in session, and if not in session, then the first week of the next session, shall cause a settlement to be made, in the manner above provided, of the former auditor or treasurer's accounts remaining unsettled, and shall cause to be made out and delivered to the person entitled thereto, a certificate of such settlement, showing the balance of moneys, sureties and effects, for which he is accountable, and what has been delivered to his successor.

Treasurer and auditor may administer oaths, &c.

SEC. 4. The auditor and treasurer shall each have power to administer all oaths and affirmations required or allowed by law, in matters touching the duties of their offices.

To have access to all offices to inspect accounts.

SEC. 5. The auditor and treasurer shall have free access to each other's offices, for the inspection of all books, accounts and papers, which they respectively contain, and free access to all the other offices of the territory, for the inspection of all such books, accounts and papers as concern any of their duties.

Letter book.

SEC. 6. The auditor and treasurer shall each keep a letter book, in which shall be copied all official letters which they may write.

Penalty for issuing illegal warrants

SEC. 7. If the auditor shall knowingly issue any warrant upon the treasury, not authorized by law, he shall, upon conviction thereof, be fined in any sum not exceeding fourfold the amount of such warrant, and imprisoned for any length of time not exceeding one year; and shall be deemed guilty of misdemeanor in office.

Penalty for refusing to pay warrant.

SEC. 8. If the treasurer shall wilfully and unlawfully refuse to pay any warrant lawfully drawn upon the treasury, he shall forfeit and pay to the holder thereof fourfold the amount of such warrant, to be recovered by action against the treasurer and his sureties, on his official bond, or otherwise, according to law; and the treasurer shall be deemed guilty of a misdemeanor in office.

Illegal conduct in office

SEC. 9. If the auditor or treasurer shall wilfully neglect or refuse to perform any duty enjoined by law, or shall be guilty of any oppression or extortion in the performance of any legal duty, shall receive any fee or reward for the performance of any legal duty, not allowed by law, or, by color of his office, shall knowingly do any act not authorized by law, or in any other manner than is required by law, he shall forfeit to the territory any sum not exceeding one thousand dollars, and be deemed guilty of a misdemeanor in office.

Audited accounts due territory, a lien on debtor's land.

SEC. 10. The amount of every account audited, adjusted and found due to the territory, according to this law, with the penalties and interest thereon, is declared to be a lien upon all real estate of the person charged with the same, from the time that suit shall be commenced for the recovery thereof.

Act, when to take effect

SEC. 11. This act shall take effect and be in force from and after its passage.

*Passed January 16th*, 1854.

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## *AN ACT* RELATING TO COMMON SCHOOLS AND SCHOOL LANDS.

# CHAPTER I.

### COMMON SCHOOLS.

SEC. 1. School fund, how provided
2. Authority of commissioners to levy taxes for school taxes.
3 Fines, &c., to be appropriated for school fund.

School fund.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may be given, by the Congress of the United States, and all bequests made by any person or persons to the territory for school purposes, shall continue an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the territory, proportionably to the number of children or youth in each district, between the ages of four and twenty-one, for support of common schools in said district, and for no other use or purpose whatever.

Commissioners to levy tax for fund.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county, to lay an annual tax of two mills on the dollar, on all the taxable property of the county, as shown by the assessment roll made by the county assessors for the same year, and to include the same in their estimate to the collector; and the said collector shall proceed to collect the said tax in the same manner as the other tax is collected; and the said money so collected shall be paid over to the county treasurer, to be appropriated for the hire of school teachers in the several school districts, to be drawn in the same manner as hereinafter prescribed.

Fines, &c., appropriated to school fund.

SEC. 3. For the further support of common schools, there shall be set apart, by the county treasurer, all moneys paid into the county treasury, arising from all fines for a breach of any penal laws of this territory. Such moneys shall be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

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# CHAPTER II.

## ELECTION OF COUNTY SUPERINTENDENT.

SEC. 1. County superintendents; their election and term of office.
2. When to qualify; oath to be filed.
3. To divide county in districts; map of districts.
4. Notice of formation of district how given; when renewed.
5. Examination of school teachers by superintendent.
6. Superintendent to visit schools yearly; his duties as visitor.
7. Yearly report of superintendent.
8. Annual apportionment of school fund, when to be made
9. Superintendent when to issue orders on treasurer for funds appropriated to districts.
10. Superintendent to collect fines, &c., due to school fund, and prosecute for trespass, &c., on school lands.
11. Trespasses on school lands indictable.
12. Other lands to be selected in lieu of sections sixteen and thirty-six, occupied before survey.
13. Compensation of superintendent.

Superintendent; his election; term of office.

SECTION 1. There shall be elected by the legal voters of the irrespective counties at the annual elections, a county superintendent of common schools for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

When to qualify; oath to be filed.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county, which oath shall be in writing and placed on file in the county clerk's office.

School district map

SEC. 3. It shall be the duty of the superintendent to divide such portion of his county as shall be inhabited, into convenient school districts; to define the boundaries and numbers; and to prepare and keep in his office a map of the districts of the county, upon which the lines and boundaries of each district shall be clearly defined; and shall lay off new districts, or divide old ones, when the public good shall require it.

Notice of formation of districts, how given.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient numbers to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

Examination of teachers.

SEC. 5. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, writing, arithmetic, English grammar and geography; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

Superintendent to visit schools yearly.

SEC. 6. The superintendent shall visit all the schools taught in his county by a qualified teacher, at least once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

Reports.

SEC. 7. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall, at least ten days before the first Friday in November of each year, make out, from the district reports, a statement of the number of the scholars in the county; the number of school libraries; the number of school-houses; the number of districts; in how many districts a school has been kept the past year; what school books are principally used; what proportion of all the scholars in the county have attended school for the past year; and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this territory.

Apportionment of school fund.

SEC. 8. It shall be the duty of the superintendent, at least fifteen days before the first Friday in November of each year, to make an apportionment of the school fund in the county treasury, among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four, and under twenty-one years, and certify the amount due to each district, which shall be drawn as hereafter directed; and he shall forthwith notify the clerks of the school districts of the amount due their respective districts.

Orders on treasury for funds appropriated district.

SEC. 9. When the districts shall have complied with the law, as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts, for the amount of the school funds appropriated to each; on the presentation of which order, the treasurer of the county shall pay over to the clerks of the districts all moneys due the respective districts, and the clerks shall indorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

Duties of superintendent in relation to school fund, lands, &c.

SEC. 10. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source in his county; and, until the Legislature shall make some provision for the disposal of the school lands given by Congress to the territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, by cutting or carrying off timber, or other material, from such lands, he shall immediately proceed against such trespasser, as provided by law in other cases, and he shall make complaint of the same before the grand jury of the proper county, at the first regular term of court after he has obtained a knowledge of such trespass.

Trespasses on school lands.

SEC. 11. Any person trespassing upon or injuring the school lands, as mentioned in the preceding section, shall be liable to be indicted for the same, and, upon conviction, shall be fined in double damages—one-half to be paid into the irreducible fund mentioned in the first section of this act, and the other half to be paid into the county treasury for the use of the county.

Selection of lands in lieu of sections 16 and 36 occupied before survey made.

SEC. 12. It shall be the duty of the county superintendent to ascertain what portions of sections numbered sixteen and thirty-six, in each township in his county, are claimed by settlers occupying the same before the survey was made. Upon ascertaining the amount thus claimed in any township, he shall proceed without any unnecessary delay to select other lands in lieu thereof, and make report to the surveyor-general of such selections; which report shall describe the lands so selected by numbers, and also state the amount, as near as may be; it shall also state what townships contain the unoccupied lands that were selected in lieu thereof. It shall also be his duty to give public notice of such selection, by posting up notices in three public places in his county, one of which shall be at the county seat, and the others in the vicinity of the lands selected, describing said lands by their numbers, and such other description as he may deem expedient.

Compensation.

SEC. 13. The said superintendent shall be allowed out of the county treasury, in compensation for his services, the sum of one hundred dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year.

# CHAPTER III.

## SCHOOLS.

TITLE I. *School Meetings.*
TITLE II. *Clerks.*
TITLE III. *Teachers.*

## TITLE I.

### *School Meetings.*

SEC. 1. When school meeting may be called, as to what shall constitute a quorum.
2. Power of such meeting the same as regular yearly meeting.
3. Organization of meeting; election of directors.
4. Directors to qualify within ten days after election.
5. Duty and powers of directors.
6. Two directors constitute a quorum.
7. Duty of directors to visit schools, promote uniformity of education, and prescribe rules for discipline.

When called.

SECTION 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, under the title of county superintendent. No number less than five legal voters shall constitute a quorum to do business in any district meeting.

Quorum.

Power of meeting.

SEC. 2. Such school meeting shall have power to do all necessary business, the same as the regular annual school meeting would have.

How to organize; election of directors.

SEC. 3. Such meeting, when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors, who shall hold their office till the next annual meeting, and until their successors are elected and qualified.

Directors to qualify.

SEC. 4. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office, to the best of their abilities, and to promote the interest of education within their district. The chairman of such meeting shall be authorized to administer this oath, which shall be in writing, and filed with the clerk of the district.

Their duties

SEC. 5. It shall be the duty of the directors of every school district:

1. To call special meetings of the district whenever they shall deem it necessary;
2. To make out a tax list of every district tax, containing the names of the taxable inhabitants in the district, and the amount of tax payable by each inhabitant set opposite his name;

3. To annex to such tax list a warrant, directed to the clerk of the district, for the collection of the sums in such list mentioned, including five per cent. for the fees of said clerk;

4. To purchase or lease a site for the district school-house, as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school-house with necessary fuel and appendages, out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of the district school-house;

5. To contract with and employ teachers: *Provided*, That no teacher shall be employed who shall not produce a certificate from the county superintendent, as is required by law, of good moral character and qualification to teach a district school;

6. To give orders to the teachers on the district clerk for their wages.

Quorum.

SEC. 6. Any two of said directors shall constitute a quorum to do business.

Visits; uniformity of system; refractory scholars.

SEC. 7. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at lease twice in each term; they shall endeavor to procure the introduction of a good and uniform system of school books in their district; and, when the teacher experiences difficulty in the government of the school, it shall be his duty to refer the cases of disorderly scholars to the directors, who shall decide whether such refractory scholar shall be compelled by suitable punishment to conform to the rules of school or be expelled from it.

## TITLE II.

### *Clerks.*

SEC. 8. Election of clerks.
9. Duty of clerks.
10. Annual report, when to be made, and what to contain.
11. Annual accounts; clerk, when to pay over to successor.
12. Annual school meetings, when held; notice of meeting
13. As to who may vote at school meeting.
14. Adjournments.
15 Power of meeting to levy certain tax; library.
16. Notice of tax to be given in call for meeting.
17. Organized school district a body politic.
18. District tax, how assessed by directors.

Clerk, election; to qualify; term of office

SEC. 8. The first school meeting shall also elect a district clerk, who shall continue in office for the term of one year and until his successor is elected and qualified. He shall qualify within ten days after his election, by giving bond to the district directors in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term; and if elected at the first meeting, not being the regular annual meeting, he shall continue in office until the next annual meeting.

SEC. 9. It shall be the duty of the clerk of each district:

Duties.

1. To record the proceedings of his district in a book, to be provided for that purpose by the district;

2. To give notice of annual or special meetings;

3. To procure a list of all persons in the district between the ages of four and twenty-one years;

4 To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return; and he shall have the same authority to enforce the collection of such tax as the county collector has for collecting the county tax, and he shall be allowed five per cent. for collecting;

5. To retain a copy of all reports made to the county superintendent, relating to the affairs of the district.

Report.

SEC. 10. It shall be the duty of the clerk to furnish the county superintendent, at least twenty days before the first Friday in November of each year, a report containing the number of scholars in his district, over four and under twenty-one years of age; how long a school has been kept in his district the past year; what school books are principally used; what proportion of the scholars in the district have attended school; and the amount of money paid to teachers.

Annual account.

SEC. 11. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district, to his successor, when his successor has legally qualified; and upon a refusal or neglect so to do, the directors shall forthwith bring suit upon his bond.

Payment to successor.

Annual school meeting; notice.

SEC. 12. There shall be an annual school meeting held in each district upon the first Friday in November; and notices of all annual or special meetings shall be in writing, signed by the clerk or directors of the district, and shall state the object for which the meeting is called; and shall be posted up in three public places in the district, at least six days previous to the day of holding such meeting.

Voters at.

SEC. 13. Every inhabitant over the age of twenty-one years, who shall have resided in any school district for one month immediately preceding any district meeting, and who shall have paid, or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

Adjournments.

SEC. 14. Any school meeting shall have power to adjourn from time to time, as occasion may require.

Power of meeting to levy certain tax.

SEC. 15. A school meeting legally called, shall have power, by the vote of a majority present, to levy a tax on all the taxable property in the district, as the meeting shall deem sufficient to purchase or lease a suitable site for a school-house, and to build, hire or pur-

Library.

chase a school-house and keep it in repair, and furnish the same with necessary fuel and appendages, and to levy an additional tax on the district for the purchase or increase of a district library, globes, maps and such apparatus as the interest and well being of the school shall require. The library shall consist of such books as the district meeting shall direct.

Notice of tax.

SEC. 16. In all cases, when a tax is to be levied, it shall be stated in the notices given of the meeting, for what purpose or purposes a tax is to be levied.

Organized district a body corporate.

SEC. 17. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school-houses in their own district; and it shall be the duty of the directors to prosecute or defend any demands for or against their district, and notice shall be served upon one of the directors of any suit brought against a district.

Taxes, how assessed.

Excessive taxes rectified.

SEC. 18. All district taxes shall be assessed by the directors, according to the valuation of property made for the assessment of county taxes, and shall be collected by the clerk of the district, with an addition of five per cent. on the same, which the clerk shall receive for his services. Any person aggrieved by an excessive assessment of the directors of any school district, may have the same reduced by his own affidavit or any competent testimony, to the satisfaction of the clerk.

## TITLE III.

### *Teachers.*

SEC. 19. Teacher to procure certificate of character; register.

Certificate of character.

Register.

SEC. 19. It shall be the duty of every teacher of a common school to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his duty to keep a register of the names of the children attending school, their age, the time when they begin, the time they continue, and of their daily attendance, which register shall be filed with the clerk of the district at the close of every term.

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## *AN ACT* TO AMEND AN ACT, ENTITLED "AN ACT IN RELATION TO COMMON SCHOOLS AND SCHOOL LANDS."

SEC. 1. "First Friday of April" substituted for "first Friday of November."
2. Apportionment of school fund, when null and void.
3. School superintendents, when and among what districts to apportion school funds of treasury.
4. County superintendents to publish the requirements of this law.
5. County superintendent, when to select other land in lieu of sections 16 and 36.
6. Acts in conflict with this act repealed.
7. Act, when to take effect.

April instead of November

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the words "first Friday of April" be substituted in place of the words "first Friday of November," wherever they occur in the act, entitled "An act relative to common schools and school lands."

Apportionment, when void.

SEC. 2. In all cases where the county superintendents have apportioned the school fund arising from tax and other sources, and where the money has not been paid out by the treasurer, such apportionment shall be null and void: *Provided*, That this section shall not affect the apportionment in the county of Clackamas, or that of any other county where all the school districts of the county shall have complied with the provisions of the act, entitled "An act relating to common schools and school lands."

Apportionment when to be made

SEC. 3. It shall be the duty of the school superintendents, of the different counties, at least ten days before the first day of April next, and of each year thereafter, to apportion all the money in the treasury applicable to common school purposes, among the school districts of the counties that shall have organized and made returns according to law fifteen days before the said first day of April.

Requirements of this act to be published.

SEC. 4. It shall be the duty of the county superintendents to call the attention of the people of their respective counties to the importance of a compliance with the requirements of this law, and the consequences of a failure to do so, by posting up notices or otherwise, within ten days after he shall have received a copy of this act.

Superintendent to ascertain if secs. 16 & 36 are occupied.

SEC. 5. It shall be the duty of the county superintendent to ascertain what portions of sections numbered sixteen and thirty-six in each township in his county, are claimed by settlers occupying the same before the survey was made. Upon ascertaining the amount thus claimed in any township, he shall proceed, without any unnecessary delay, to select other lands in lieu thereof, and make report to the surveyor-general, or such other officer as may be appointed by law for that purpose, of such selections, which report shall describe the lands so selected by numbers, and also state the amount as near as may be; it shall also state what townships contain the unoccupied lands that were selected in lieu thereof; it shall also be his duty to give public notice of such selection, by posting up notices in three public places in his county, one of which shall be at the county seat, and the others in the vicinity of the lands selected, describing said lands by their numbers and such other description as he may deem expedient.

Acts repealed.

SEC. 6. That all acts and parts of acts in conflict with this act are hereby repealed.

When to take effect.

SEC. 7. This act shall take effect and be in force from and after its passage.

*Passed January 31st*, 1855.

# CHAPTER III.

## MISCELLANEOUS PROVISIONS.

SEC. 1. Minutes of first meeting to be signed by chairman and secretary, and delivered to clerk.
2. Who to be chairman and secretary.
3. Meetings may alter or repeal prior proceedings.
4. Power of meeting to levy tax.
5. Districts failing to organize or report, not entitled to school funds; proviso.
6. County superintendent to apportion funds to organize districts only.
7. Schools, when to be free.
8. When scholars not in district may attend without charge.
9. County superintendent may hold any other office in territory.
10. When directors to appoint librarian.
11. Act, when to effect.

Minutes of first school meeting.

SECTION 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

Chairman & secretary.

SEC. 2. In all school meetings, the director whose term of office shall first expire shall act as chairman, and the clerk of the district shall act as secretary.

Meeting may alter, &c., prior proceedings.

SEC. 3. District meetings shall have power to repeal, alter or modify their proceedings from time to time as occasion may require.

Power of meeting to levy tax.

SEC. 4. District meetings, legally called, shall have power to levy a tax upon the property of the district for any purpose whatever, connected with and for the benefit of schools, and the promotion of education in the district: *Provided*, That two-thirds of the legal voters present are in favor of such tax.

Districts failing to organize or report, not entitled to school funds.

SEC. 5. Any new district failing to organize and report to the county superintendent the number of children over four and under twenty-one years of age in said district, at least twenty days before the first Friday in November; or any district, having been organized for the term of one year or more, failing to report to the county superintendent, as is required in section eleven of the chapter entitled "School Meetings," in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report, any inhabitant of such district may make such report, verified on oath, and the county superintendent shall receive it, the same as if made by the clerk.

Proviso.

Funds apportioned to organized districts only.

SEC. 6. The county superintendent shall apportion all the county school fund for that year, among those districts only which have organized and reported according to law.

Schools, when free.

SEC. 7. Whenever a school is kept in any district, the teacher of which shall be supported out of the general county school fund, or by tax on the district, as aforesaid, such school shall be open and free to all children between the ages of four and twenty-one years in such district.

Scholars not in district

SEC. 8. The directors of any district may permit scholars living out of the district to attend school, with or without charge, as they may deem proper.

SEC. 9. No person shall be disqualified to hold the office of county superintendent, district director, or clerk, on account of holding any other office within the territory at the same time.

Librarian

SEC. 10. It shall be the duty of the directors to appoint a suitable person for librarian, when the district shall have procured a library.

Act, when to take effect.

SEC. 11. This act shall take effect and be in force from and after its passage.

*Passed January 12th*, 1854.

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## *AN ACT* SUPPLEMENTAL TO THE ACT RELATING TO COMMON SCHOOLS AND SCHOOL LANDS.

SEC 1. Sec 11, chap. 2, of foregoing act repealed; proviso.
2. School superintendent empowered to loan moneys, when.

Act repealed.

Fines to whom paid.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That section eleven of chapter two of the act to which this is supplemental be, and the same is hereby made applicable to the university lands of this territory: *Provided*, That all fines collected under the provisions of said section shall be paid to the university land commissioner, to be by him deposited in the territorial treasury, as provided by law for other university funds coming into his hands.

Loans by school superintendents.

SEC. 2. That the school superintendents of the different counties are hereby empowered to loan the moneys belonging to the different school districts of their respective counties, whenever the directors of any school district in their county shall express a desire to have such money loaned.

*Passed January 22d*, 1855.

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## *AN ACT* TO PROVIDE FOR THE PUBLIC PRINTING AND DISTRIBUTION OF THE LAWS AND JOURNALS.

## CHAPTER I.

### PUBLIC PRINTING.

SEC. 1. Printer, how elected; term of office; his bond.
2. Rates of allowance.
3. Number of copies of law, council and house journal to be printed annually, and how to be distributed by secretary.
4. Secretary of territory to procure practical printer to inspect work of public printer; compensation of inspector.
5. Clerks of Assembly and council to furnish printer copy of laws and journals twenty days after adjournment.
6. Printer to index and annotate said laws and journal.
7. Laws originating in the house or council, when and by whom to be furnished.

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SEC 8. Printer, when to insert in newspaper all laws so furnished.
9 How long newspaper may be read in evidence
10. Acts heretofore passed relative to public printing repealed.
11. Act when to take effect.

Public printer; election; term of office; bond.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected biennially, by the Legislative Assembly, on joint ballot, a territorial printer, who shall serve for two years and until his successor shall be elected and qualified, and such printer shall, within ten days after his election, or before entering upon the duties of his office, enter into bonds with sufficient surety, to be approved by the territorial treasurer, and file in the office of the territorial auditor, with conditions for the prompt and workmanlike execution of the public printing, and faithful performance of all the duties required of him by law.

Rate of allowance.

SEC. 2. The prices to be paid such printer are hereby established as follows: The composition, per thousand ems, two dollars and fifty cents; press work, per token, common form, two dollars and fifty cents; folding reports and bills, per hundred copies on each signature, three dollars; stitching reports and bills, per thousand copies, one dollar and fifty cents; paper, eight dollars per ream; and for binding in strong paper, or otherwise, a reasonable compensation shall be allowed; and the secretary of the territory shall defray the expenses of the same out of any money in his hands, appropriated by Congress to pay the expenses of the legislation of this territory.

Number of copies of laws, council and house journals to be printed. Ib How to be distributed by secretary of territory.

SEC. 3. The territorial printer shall annually cause one thousand copies of the laws, three hundred copies of the journals of the council, and three hundred copies of the journals of the House of Representatives, to be printed and delivered to the secretary of the territory, to be by him disposed of as follows: one copy of each to the members of the Legislative Assembly, their officers and clerks; one copy of each to the civil officers of this territory, appointed by the United States; ten copies of each to be placed in the territorial library; one copy of each to be deposited with the county auditor of each county for inspection of the public; the remaining portion to be distributed among the several counties in proportion to their population, to be received by the county commissioners' clerks, and receipted for by them.

Secretary of state to procure practical printer to inspect, &c., work of public printer.

SEC. 4. That it shall be the duty of the secretary of territory to procure the services of some practical printer, to see that the work furnished by the territorial printer is executed in a workmanlike manner, and to measure and estimate the same, and to give a certificate, under affidavit, to said territorial printer to that effect, and the said practical printer shall receive, as a compensation for his services, the sum of five dollars per day, for the time necessarily employed in said duty.

Clerks to furnish printer copy of laws and journal twenty days after adjournment.

SEC. 5. Manuscript copies of said laws and journals shall be furnished the said territorial printer by the chief clerks of the two branches of the Legislative Assembly, within twenty days after the adjournment, for which services they shall receive the sum of five dollars per day, to be paid out of any money appropriated by

Congress, to defray the expenses of the Legislature of this territory, the clerk of the House of Representatives to furnish a copy of all laws originating in the house, and the clerk of the council to furnish a copy of all laws originating in the council.

Printer to prepare index, &c.

SEC. 6. It shall be the duty of the territorial printer to make a complete index to said laws and journals, and notes to the laws, and he shall receive for said services the sum of five dollars per day.

Laws originating in house or council, when and by whom to be furnished.

SEC. 7. Copies of all laws originating in the council, shall be furnished by the clerk of the council to the territorial printer within ten days after their passage, and copies of all laws originating in the house, shall in like manner be furnished by the clerk of the house.

Laws so furnished to be published in newspaper

SEC. 8. It shall be the duty of the territorial printer to publish, in the columns of the newspaper by him published, all laws by the clerks so furnished, within twenty days after their passage, and he shall receive the sum of two dollars fifty cents per thousand ems, as a compensation for such services, to be paid by the secretary of the territory.

How long may be read in evidence

SEC. 9. Every law so published may be read in evidence from the paper in which it shall be contained, in all courts of justice in this territory, and in proceedings before any officer, body or board; until six months after the close of the session at which it became a law.

Prior acts repealed.

SEC. 10. All acts heretofore passed relative to the public printing are hereby repealed.

Act, when to take effect.

SEC. 11. This act to take effect and be in force from and after its passage.

*Passed January 11th, 1854.*

## *AN ACT* SUPPLEMENTAL TO AN ACT TO PROVIDE FOR THE PUBLIC PRINTING AND DISTRIBUTION OF THE LAWS AND JOURNALS.

SEC 1. Territorial printer released from prior obligations: Proviso
2. Territorial printer to print five hundred copies of the laws, &c.
3 Laws of a special nature, &c, how to be published.
4 Repeal of certain enactments

Preamble

*Whereas*, The territorial printer was required by an act, entitled "An act to provide for the public printing and distribution of the laws and journals," to cause one thousand copies of the laws passed by the last session of the Legislative Assembly, to be printed and delivered to the secretary of the territory; and

*Whereas*, He has delivered only five hundred copies of such laws; and

*Whereas*, It is supposed that the five hundred copies not yet delivered are lost or damaged by shipwreck; therefore,

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the said territorial printer be, and he is hereby released from his obligation to furnish five hundred copies additional to those already delivered to the secretary of the territory, —*Provided*, That the said territorial printer shall not receive any pay, except for the five hundred copies already delivered.

500 copies of the laws how to be printed, &c.

SEC. 2. The said territorial printer is hereby authorized and required to cause to be printed five hundred copies of the laws of a general nature, passed at the last and present sessions of the Legislative Assembly, and to have the said laws bound in one volume, with an index and marginal notes, in all respects similar to the volume of statutes passed at the last session, and printed by the said territorial printer.

Special laws, how printed.

SEC. 3. The territorial printer shall publish the laws of a special nature, at the end of the journal of the House of Representatives; and the decisions of the Supreme Court of this territory, at the end of the council journal.

Repeal of acts.

SEC. 4. So much of any act or acts as are hereby supplied or altered, shall be repealed, and this act shall take effect and be in force from and after its passage.

*Passed January 30th*, 1855.

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## *AN ACT* TO CREATE AND REGULATE THE OFFICE OF PROSECUTING ATTORNEY.

SEC. 1. Prosecuting attorney, how chosen, term of office; proviso.
2. Votes, how canvassed; certificate to be issued.
3 Attorney to be sworn; form of oath.
4. Duties of prosecuting attorney.
5. To report annually to the secretary of the territory.
6. In case of failure of attorney to discharge the duties of his office, or of vacancy, District Court to appoint
7. Powers and compensation of the officer appointed.
8. Not to receive fee or reward, or practice as an attorney in certain cases; penalty for so doing.
9. To be paid a salary.
10. Fees of prosecuting attorney.
11. To receive ten per cent. on all forfeited recognizance, fines, forfeitures, &c., fees for defending or prosecuting civil suits on behalf of any county, for attendance.
12. Certain fees to be paid by counties where, or on behalf of which, the service was rendered.
13 Fees allowed by tenth section to be taxed as costs against prisoner convicted.
14. Duty of magistrates who commit or hold to bail any person charged with crime.
15. When act to take effect; former act repealed.

How chosen; term of office.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected annually, at the general election, by the qualified voters in the several judicial districts, a prosecuting attorney for each judicial district, who shall hold his office until his successor shall be elected and qualified: *Provided*, that the Legislative Assembly, at its present session, shall elect, on joint ballot, prosecuting attorneys for the several judicial districts, who shall hold their office until the next general election, or until their successors are duly elected and qualified.

Votes, how canvassed.

SEC. 2. The clerks of the boards of county commissioners shall make out an abstract of the votes given in their respective counties for prosecuting attorney, and transmit the same to the secretary of the territory; and said votes shall be canvassed, and a certificate issued, in the same manner as in the election of delegate to Congress.

Oath.

SEC. 3. Before entering upon the discharge of his duties, the prosecuting attorney shall take and subscribe the following oath of office, to be indorsed on the back of said certificate, before any person authorized to administer oaths, and shall file the same in the office of the secretary of the territory:

Its form.

I, A. B., do solemnly swear (or affirm) that I will support the constitution of the United States, will faithfully discharge the duties of the office of prosecuting attorney to the best of my ability, and that I will prosecute no person through envy, hatred or malice; that I will leave no person unprosecuted through fear, affection, or hope of reward.

His duties.

SEC. 4. He shall reside in his district during his continuance in office, shall commence and prosecute all civil and criminal actions in which the territory or any county in his district may be a party, defend all suits brought against the territory, or any county in his district, and prosecute all forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures, accruing to the territory or any county in his district. He shall appear on behalf of the territory in the Supreme Court, in all appeals or writs of error taken from any county in his district.

Report.

SEC. 5. The several prosecuting attorneys shall annually, in the month of December, make, to the secretary of the territory, a report of the amount and kind of official business by them done respectively in the preceding year, the number of persons prosecuted, the offences for which such prosecutions were had, the results thereof, and the punishment awarded in each case, with such particular statements and suggestions as he may deem interesting and useful.

Appointment of prosecuting attorney *pro tem.*

SEC. 6. If the prosecuting attorney of any district be unable to attend to the duties of his office from sickness or absence, or the office should become vacant by death, removal, resignation or otherwise, the District Court shall appoint some suitable person of the proper district to discharge the duties of the office during such inability or vacancy, as the case may be.

Compensation.

SEC. 7. The person thus appointed shall possess the same power, and receive the same compensation, as the proper officer would if he were present.

When not to receive fees, &c., nor practice.

SEC. 8. He shall not receive any fee or reward from, or on behalf of any prosecutor, for any of his official services, or, during the pendency of any such prosecution, be engaged as counsel or attorney for either party in any civil action depending essentially upon the same facts. If any prosecuting attorney shall violate the provisions of this section, he shall be deemed guilty of a misdemeanor, and, upon indictment and conviction thereof, shall be struck from the roll of attorneys, and be fined in any sum not exceeding five hundred dollars, at the discretion of the court, for the use of the proper county.

Payment of salary.

SEC. 9. Each prosecuting attorney shall be entitled to receive a salary, in semi-annual payments, on the first day of July and January in each year, at the annual rate of five hundred dollars, to be paid from the territorial treasury.

Fees.

SEC. 10. Each prosecuting attorney shall receive the following fees: In all criminal prosecutions where the punishment is death or imprisonment for life, where the prisoner is convicted, twenty-five dollars; where the prisoner is acquitted, twelve dollars. In all criminal prosecutions where the punishment is imprisonment in the penitentiary for any less term than for life, where the prisoner is convicted, fifteen dollars; where the prisoner is acquitted, seven dollars. In all criminal prosecutions where the punishment is imprisonment in the county jail, or not particularly specified in this section, where the prisoner is convicted, ten dollars; where the prisoner is acquitted, five dollars.

Ib.

SEC. 11. Each prosecuting attorney shall receive for the prosecution of all forfeited recognizances, debts, fines and forfeitures, accruing to the territory or any county in his district, ten per cent. upon the amount recovered. For each civil suit that he may defend or prosecute on behalf of any county in his district, twenty-five dollars. For each day's attendance upon the District Court, during the sitting of grand jury in any county in his district, five dollars.

Ib. When and by whom paid.

SEC. 12. The fees of prosecuting attorneys, provided for in the ninth and tenth sections of this act, shall be paid by the county where or to which the service was rendered. It shall be the duty of the district clerk, at the close of each term of the District Court in his county, to tax the fees of the prosecuting attorney for that term, which bill of fees shall be approved by the judge of the District Court. Upon presentation of said bill of fees to the proper officer of the county, it shall be his duty to draw a warrant upon the county treasury for the amount of said bill in favor of the prosecuting attorney.

Fees taxed as costs against convict.

SEC. 13. It shall be the duty of the district clerk, in all criminal prosecutions where the prisoner is convicted, to tax and collect, as costs against such prisoner, for the use of the county, an amount in each case equal to the fees allowed the prosecuting attorney by the tenth section of this act. Said district clerk shall pay said fees, when collected, semi-annually into the county treasury, taking duplicate receipts from the county treasurer therefor—one to be retained by himself, and the other to be filed in the office of the board of county commissioners; which receipt, when so filed, shall be sufficient to charge the county treasurer with the receipt of said fees.

Paid in treasury.

Duty of committing, &c.; magistrate to transmit papers.

SEC. 14. Each magistrate who shall commit or hold to bail any person charged with crime against the laws of this territory, shall immediately make out and transmit, under seal, by mail or other safe conveyance, to the prosecuting attorney of the proper district, a copy of the original affidavit, the statements of the prisoner, and depositions of all the witnesses examined on the part of the territory.

SEC. 15. The act entitled "an act to provide for the selection of prosecuting attorneys," passed September 29th, 1849, is hereby repealed.

Act, "entitled, &c." repealed.

SEC. 16. This act to take effect and be in force from and after its passage.

Act, when to take effect.

*Passed the Council, January 10th*, 1853.
*Passed the House of Representatives, January 26th*, 1853.

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## *AN ACT* TO AMEND AN ACT TO CREATE AND REGULATE THE OFFICE OF PROSECUTING ATTORNEY.

SEC 1. Prosecuting attorney, when to be elected for Jackson, Umpqua, Douglas and Coos, his fees and salary.
2 Attorney for Jackson to attend board of commissioners; his duties, &c.
3 Ib. may prosecute for non-compliance with revenue laws, and crimes, before justice of peace
4. County auditor; when to appoint prosecuting attorney *pro tem.*
5. Power and salary of person thus appointed.
6. Term of office
7. Act, when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected, at the next annual election, in the manner provided in the first section of the act to which this is an amendment, one prosecuting attorney for the county of Jackson, and one for the counties of Umpqua, Douglas and Coos; each of said attorneys shall receive the same fees, and an annual salary of three hundred dollars, payable in the same manner, and at the same times, and shall perform the same duties, and have the same authority as is provided in the act to which this is an amendment.

Prosecuting attorney, how elected.

SEC. 2. The prosecuting attorney for the county of Jackson, shall attend each and every session of the board of county commissioners of said county, and prosecute and defend all claims for or against said county, as said board may direct, and shall receive therefor the sum of five dollars for each day's attendance upon said board, and while engaged in any duties assigned him by said board, to be paid out of the county treasury: *Provided*, That said board may allow such further compensation for any service he shall perform under their direction, as they may deem proper.

Duties and salary of, in Jackson

SEC. 3. And said attorney may prosecute any suit of a criminal nature, and for the non-compliance with the revenue laws of this territory, before any justice of the peace of said county, in all cases where justices of the peace have competent jurisdiction, and shall be entitled to the same fees, and payable in the same manner, as is provided in the act to which this is in amendment for similar services.

When may prosecute before justice.

SEC. 4. If the prosecuting attorney of said county be unable to attend to the duties of his office, from sickness or absence, or the office becomes vacant by death, resignation or otherwise, the county

When auditor may appoint.

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auditor of said county shall appoint some suitable person to discharge the duties of the office during such inability or vacancy, as the case may be; subject, however, to the approval of the board of county commissioners at their next meeting.

Compensation and powers of attorney so appointed.

SEC. 5. The person thus appointed shall possess the same power, and receive the same compensation as the proper officer would if personally present.

Term of office

SEC. 6. That section one of the act to which this is an amendment, be so altered that prosecuting attorneys shall be elected for the term of three years, and shall hold their offices until their successors are elected and qualified.

Act, when to take effect.

SEC. 7. This act shall take effect and be in force from and after its passage.

*Passed January 30th, 1855.*

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## *AN ACT* TO REGULATE NOTARIES PUBLIC.

SEC. 1. Appointment of notaries public; term of office.
2. Notary to take oath and give bond before acting.
3. When notary or executor to deposit records and papers with clerk of court; penalty for neglect.
4. & 5. Duties of notary relative to protests; when service may be by mail.
6. Notary to keep record, what to contain, of what evidence.
7. Clerk of District Court to preserve records, &c., may give copies thereof; forfeitures under this chapter, how recovered.
8. Seal of notary; impression thereof to be deposited with secretary.
9. Power to take acknowledgment of deeds and administer oaths.
10. Full credit to be given to their acts.
11. Act, when to take effect.

Governor to appoint notaries public; term of office.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the governor shall appoint, in each of the organized counties in this territory, one or more notaries public, who shall be considered territorial officers, and shall hold their offices for the term of two years, unless sooner removed by the governor, and who shall have power to act, by virtue of their office, throughout the territory.

Oath and bond.

SEC. 2. Each and every notary public, before he enters upon the duties of his office, shall take an oath to support the constitution of the United States, and for the faithful discharge of the duties of his said office, and shall give a bond to the governor with sufficient surety, in the penal sum of five hundred dollars, conditioned for the discharge of the duties of his said office.

Records, when deposited with clerk of court.

SEC. 3. Whenever the office of any notary public shall become vacant, the records of said notary public, together with all the papers relating to the office, shall be deposited in the office of the clerk of the District Court in the county in which the said notary public resides; and any notary public who, on his resignation or removal from office, shall neglect to deposit such records and papers in the clerk's office as aforesaid, for the space of three months, shall forfeit and pay a sum not less than fifty, nor more than five hundred dollars; and if any executor or administrator of any deceased notary public shall neglect to lodge such records and papers as aforesaid, which come into his hands, in the clerk's office, for the space of three months after the acceptance of that trust, he shall forfeit and pay a sum not less than fifty, nor more than five hundred dollars; and if any person shall knowingly destroy, deface or conceal any records or papers of any notary public, he shall forfeit and pay a sum not less than fifty, nor more than five hundred dollars, and shall be moreover liable to an action for damages by the party injured.

Duties of, relative to protests.

SEC. 4. It shall be the duty of each and every notary public, when any bill of exchange, promissory note, or other written instrument shall be by him protested for non-acceptance or non-payment, to give notice thereof to the maker, and each and every indorser of a bill of exchange, and to the maker or makers of, and each and every security or indorser of any promissory note, or other written instrument, immediately after such protest shall have been made.

Ib. Proviso.

SEC. 5. It shall be the duty of every notary public personally to serve the notice upon the person or persons protested against: *Provided*, He or they reside within two miles of the residence of such notary public; but if such person or persons reside more than two miles from such residence, the said notice may be forwarded by mail or other safe conveyance.

To keep record of notices, &c.

SEC. 6. Each and every notary public shall keep a record of all such notices, and of the time and manner in which the same shall have been served, and of the names of all the parties to whom the same were directed, and the description and amount of the instrument protested; which record shall at all times be competent evidence to prove such notice, in any trial before any court in this territory, where proof of such notice may become requisite.

Duties of clerks of district courts.

SEC. 7. It shall be the duty of the several clerks of the district courts to receive and keep safe all the records and papers directed by this chapter to be deposited in their office, and give attested copies of any of said records or papers when required; and copies so given by the said clerk, are hereby declared to be as valid as if the same had been given by the said notaries public. All forfeitures under this chapter shall be, one-half to the use of this territory, and the other half to him or them who shall sue for the same; to be recovered in a civil action in any court having jurisdiction of the same, in the county where such notary public shall reside.

Seal.

SEC. 8. Every notary public, before he enters upon the duties of his office, shall provide an offical seal, and deposit an impression of the same, together with said oath and bond, in the office of the secetary of the territory.

May take acknowledgments of deeds.

SEC. 9. Notaries public shall have full power and authority to take acknowledgments of deeds, and to administer oaths in all cases where oaths are required by law to be made.

Full credit to be given their acts.

SEC. 10. Full faith and credit shall be given to all the protestations, attestations and other instruments of publication of all notaries public, now in office or hereafter to be appointed under the provisions of this chapter.

Act when to take effect.

SEC. 11. This act shall take effect and be in force from and after the first day of May next.

*Passed January* 18, 1854.

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## *AN ACT* TO REGULATE THE FEES OF CERTAIN OFFICERS AND OTHER PERSONS.

SEC. 1. Preamble.
2. Fees of secretary of territory.
3. Judge of probate.
4. Clerks of district courts.
5. Of sheriff.
6. Of coroner.
7 Of clerk of Supreme Court.
8 Justice of the peace.
9. Of constables.
10. Of recorders of deeds.
11. Of county auditors.
12. Of clerk of board of commissioner.
13. Of jurors.
14. Of witnesses.
15. Of commissioners to take depositions.
16. Of notaries public
17. Of appraisers of property when no express provision is made.
18. Mileage of officers.
19. Mileage for sheriffs and constables, how computed.
20. Fees, when to be determined by District Court or board of commissioners.
21 Term "folios" defined.
22. Every officer to hang up their table of fees.
23. Allowance of above fees, not applicable when special proviso is made.
24 & 25. Any officer herein named, receiving a greater fee than allowed by law, guilty of misdemeanor.
26. Officer, when to give applicant a list of fees and receipt therefor.
27. Clerk to enter fees of witnesses in fee book, when and how.
28. Additional fees allowed in Jackson and Coos.
29. Compensation of viewers, reviewers and supervisors of roads.
30. Fees of assessors.
31. Act of January, 1854, regulating fees of officers, repealed; this act not applicable to Clatsop.
32. Sec. 6, of chap. 8, regulating proceedings at law in Supreme and District Court, repealed.
33. Act, when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That for the services mentioned in this act, hereinafter done, as performed by the several officers or persons herein named, the following fees shall be allowed.

Fees of secretary of territory.

SEC. 2. The fees of the secretary of the territory, for any services herein specified to be rendered by him, shall be as follows:

| | |
|---|---|
| Distributing the laws and journals of each regular session of the Legislative Assembly, to be paid out of the territorial treasury, - - - - - - . | $100 00 |
| Certifying and affixing the seal of the territory to any document or paper, - - - - - - | 2 00 |
| Making copies of any record, for each folio, - - | 0 25 |
| Recording any document or paper by law required to be recorded by him, for each folio, - - - | 0 40 |

Fees of judge of probate.

SEC. 3. The fees of judge of probate shall be as follows:

| | |
|---|---|
| Issuing letters testamentary, of administration or guardianship, | $3 00 |
| Refusing letters or probate of a will upon any application therefor, | 3 00 |
| Drawing bond, and taking the same in any case, | 1 00 |
| Approving such bond, for each surety therein, | 0 25 |
| Writing and taking any affidavit, | 0 50 |
| For every 100 words contained in any affidavit over 100 words, | 0 25 |
| Entering a record of any appointment, | 0 25 |
| Writing a petition in any case when required by a party, | 0 50 |
| Issuing a citation, | 0 50 |
| Issuing any other instrument under seal, | 0 75 |
| Hearing a petition in any case, | 0 50 |
| Hearing each contested case, | 3 00 |
| Hearing a complaint against a spendthrift or lunatic, | 3 00 |
| For each decree, order, or allowance of court, entered or recorded, | 0 25 |
| Entering a continuance, when asked for by a party, to be paid by party asking same, | 0 50 |
| Making a final settlement in any case, | 1 50 |
| Entering an allowance of appeal, | 0 25 |
| Examining and correcting any inventory, appraisement, or bill of sale, for each folio, | 0 20 |
| Recording any paper required by law to be recorded, for each folio, | 0 25 |
| Making copies of any record or paper, for each folio, | 0 25 |
| Extending letters of administration, | 0 50 |
| Making certificate of necessity for the sale of real estate, | 0 50 |
| Order for sale of real estate, | 0 50 |
| Executing and acknowledging a deed for the sale of real estate sold by executors, administrators or guardians, | 2 00 |
| Executing indentures of apprenticeship, | 1 00 |
| Assigning personal estate, or dower, in real estate, to widows, | 0 75 |
| For order of apportionment of any insolvent's estate among his creditors, | 1 00 |
| Filing any paper required by law to be filed, | 0 10 |
| Administering an oath, | 0 20 |
| Indorsing an allowance on an account, and closing the same, | 0 20 |
| Entering any case on docket, | 0 20 |
| Carrying each item from record to journal, | 0 10 |
| Carrying gross amount to ledger, | 0 10 |
| Alphabeting an estate, to be charged but once in each book, | 0 20 |

In addition to the above fees, each judge of probate shall be allowed one hundred dollars per annum, to be paid quarterly out of the county treasury.

Fees of clerks of District Court.

SEC. 4. The fees of the clerks of the District Court shall be as follows:

* * *

| | |
|---|---|
| For issuing and sealing any writ of summons, attachment, replevin, *certiorari*, *habeas corpus*, mandamus, or other original writ, except subpœna, | $0 75 |
| Issuing a warrant of arrest, | 0 75 |
| Issuing a subpœna for one person, as a witness, | 0 25 |
| For each additional person named, | 0 10 |
| Issuing an execution, | 0 75 |
| Filing complaint, answer, demurrer, or any other pleading, or paper, | 0 15 |
| Entering cause on docket, to be charged but once, | 0 25 |
| Docketing appeal from justice of the peace, | 0 50 |
| Entering each writ, | 0 20 |
| Entering sheriff's return on each writ, | 0 20 |
| Entering appearance of either party, personal, or by attorney, | 0 25 |
| Entering a continuance, discontinuance, or non-suit, | 0 25 |
| Entering judgment upon an issue of fact, or law, or report of referees, judgment by default, or confession, or satisfaction of a judgment, | 0 50 |
| Entering a motion, | 0 25 |
| Entering a special rule, recognizance, discharge of recognizance, surrender of bail by principal, order cancelling bail bond or undertaking, rule of reference, report of referees, and notice of appeal to Supreme Court, | 0 50 |
| Writ of venire for jury charged in each case, | 0 50 |
| Recording panel and swearing, | 0 50 |
| Entering jury on docket, | 0 25 |
| Receiving and entering verdict, | 0 50 |
| Swearing each witness, | 0 20 |
| Entering claim of each witness for attendance, and giving order to him, | 0 25 |
| Taxing costs in a cause, | 0 50 |
| Entering allowance of a writ of error, *certiorari*, or appeal, | 0 50 |
| Taking and approving bond, or undertaking in other cases, | 0 50 |
| Taking and approving bond, or undertaking, or writ of error, *certiorari*, or appeal, | 0 50 |
| For certificate, with seal, | 1 00 |
| Making up a record of the proceedings, or judgment roll, for each folio, | 0 20 |
| Making copies of any process, pleadings, records or proceedings in a cause, for each folio, | 0 20 |
| Entering a decree in Chancery, for each folio, | 0 20 |
| Taking deposition, for each folio, | 0 20 |
| Issuing a commission to take testimony, | 1 00 |
| Entering an order to advertise, | 0 50 |
| Filing a declaration of intention to become a citizen of the United States, | 0 50 |
| Making a certified copy of such declaration, under seal of court, | 1 00 |
| Entering final admission of aliens to rights of citizenship, | 1 00 |
| Making certified copy thereof, under seal of court, | 1 00 |

Fees of sheriff.

SEC. 5. The fees of sheriffs shall be as follows:—

| | |
|---|---|
| For the service of a writ of summons, attachment, replevin, or other original writ, except subpœnas for witnesses, on each defendant, - - - - - - | $0 50 |
| Serving a writ of execution on real or personal property, | 0 50 |
| Arresting a defendant upon civil or criminal process, - | 1 00 |
| Committing to prison, or discharging therefrom, or attending a person before a court or judge, - - | 1 00 |
| Executing a sentence of death, - - - - | 50 00 |
| Serving a writ of possession, - - - - | 2 00 |
| Serving a writ of possession, with the power of the county, | 5 00 |
| Executing and returning a writ of inquiry, or appraisal of property, - - - - - - - | 2 00 |
| Serving and returning subpœna, for each person named, | 0 30 |
| Serving and returning any order of court, on each person, | 0 50 |
| Drawing and accepting any bail bond, or undertaking, - | 1 00 |
| Making and delivering a copy of any writ or process, necessary to complete a service, for each folio, - | 0 25 |
| Summoning a grand and trial jury for each panel, besides mileage to be paid out of the county treasury, - | 8 00 |
| Summoning a jury in other cases required by law, (besides mileage,) - - - - - - | 5 00 |
| Calling a jury in each case, - - - - | 0 25 |
| Per centage on all moneys actually made, and paid to the sheriff on execution, order, decree or sale of property under one thousand dollars, - - - | 0 03 |
| Per centage on all sums over one thousand dollars, - | 0 02 |
| Making a deed of land sold on execution, decree, or order of court, to be paid by the grantee, - - - | 2 00 |
| Giving notice of any general or special election, (besides mileage,) to be paid by the county, - - - | 1 50 |
| Serving notice on each judge of election, (besides mileage,) to be paid by the county, - - - - - | 0 50 |
| For each day's attendance on any court of record, when services are required, - - - - - | 3 00 |

For any service which may be rendered by a constable, the same fees as are by law allowed for such services to a constable.

For conveying a prisoner under sentence to the penitentiary, and delivering him to the warden or keeper thereof, four dollars per day, besides mileage for himself and prisoner, for the time actually employed, and such expenses as may be necessarily incurred by the sheriff in guarding the prisoner while conveying him to the penitentiary, to be paid out of the territorial treasury.

SEC. 6. The fees of coroner shall be as follows:— Fees of coroner

| | |
|---|---|
| Holding an inquest upon dead body, (besides mileage,) - | $5 00 |
| Drawing all necessary writings, for each folio, - - | 0 25 |

For all services rendered by them, the same fees as are herein allowed to sheriffs for similar services.

SEC. 7. The fees of clerks of Supreme Court shall be as follows: Fees of clerks of Supreme Court

| | |
|---|---|
| For every writ of error, or other original writ allowed, - | $1 50 |
| Affixing the seal of the court to any process, with certificate, - - - - - - - | 0 50 |

| | |
|---|---|
| Filing the papers sent at any one time from a district court, | $0 50 |
| Filing each paper in a cause other than from a district court, | 0 50 |
| Entering cause on a docket, | 0 50 |
| Entering appearance, or default of parties, | 0 50 |
| Entering each motion in cause, | 0 25 |
| Entering each rule or order, | 0 75 |
| Entering a judgment, decree or sentence, | 1 00 |
| Issuing a remitter, mandate or *procedendo* to a district court, | 1 00 |
| Taxing costs in a cause, | 0 75 |
| Entering satisfaction on record, | 0 50 |
| Making a certified copy of any pleading, order, judgment, decree, or other proceeding, filed or of record, for each folio, | 0 25 |
| Recording opinion of the Supreme Court, for each folio, | 0 15 |

Fees of justice of peace.

SEC. 8. The fees of justices of the peace shall be as follows:—

| | |
|---|---|
| Issuing a summons or warrant of arrest in a civil or criminal case, | $0 50 |
| Issuing a subpœna for one witness, | 0 25 |
| For every additional witness named therein, | 0 10 |
| Issuing writs of attachment or replevin, | 0 50 |
| Issuing an execution, | 0 50 |
| Issuing a venire for a jury, | 0 50 |
| Issuing a writ of restitution, | 0 50 |
| Issuing any search warrant, | 0 50 |
| Warrant of commitment to jail, | 0 50 |
| Taking a bail bond, recognizance, or other undertaking, | 0 50 |
| Entering amicable suit on docket, | 0 50 |
| Entering any other suit on docket, | 0 25 |
| Entering an adjournment, at the request of either party, | 0 25 |
| Entering a rule of reference, | 0 25 |
| Entering a judgment by confession or default, | 0 50 |
| Entering a judgment upon trial, | 0 50 |
| Entering a discontinuance, or satisfaction, | 0 50 |
| Entering an appeal and certifying the same, or a *certiorari* to District Court, | 0 75 |
| Swearing each witness, juror, or arbitrator, | 0 10 |
| Opening a judgment for rehearsing, | 0 50 |
| Making any order not herein provided, | 0 25 |
| Filing each paper required by law to be filed, | 0 15 |
| Taxing costs of suit, | 0 50 |
| Taking an affidavit, | 0 25 |
| Taking an acknowledgment of a deed, or other instrument in writing, with a certificate thereof, | 1 00 |
| Taking any deposition or examination, for each folio, | 0 25 |
| Making a certified copy of any proceedings had before him, for each folio, | 0 25 |
| Performing a marriage ceremony and making a return, (exclusive of mileage,) | 5 00 |
| Attending with clerk of commissioners at the opening of poll books of election, for each day, (exclusive of mileage,) | 2 00 |

Fees of constables.

SEC. 9. The fees of constables shall be as follows:

| | |
|---|---|
| Serving a summons, | $0 50 |
| Serving a warrant, by arresting a defendant, | 1 00 |
| Committing defendant to prison, | 0 50 |
| Serving a writ of attachment, or replevin, | 0 50 |
| Serving a writ of execution, | 0 50 |
| Executing a writ of restitution, | 0 50 |
| Serving subpœnas, or notice, by copy, | 0 50 |
| Summoning a jury, | 1 00 |
| Attending the same on trial, | 0 50 |
| Taking bond or other security, when required by law, | 1 00 |
| Advertising and selling property, | 0 75 |
| Advertising without selling, | 0 50 |
| Return of execution, when no levy is made, | 0 50 |
| Per centage on all sums collected by execution or process, and paid over, five per centum. | |
| Summoning jury on dead body, | 2 00 |

Fees of recorders of deeds.

SEC. 10. The fees of recorders of deeds shall be as follows:

| | |
|---|---|
| Recording a deed, mortgage, or contract, required by law to be recorded, for each folio, | 0 25 |
| Recording a town plot, for each lot such plot may contain, | 0 05 |
| Recording a plot of survey, for each course such survey may contain, | 0 05 |
| Recording description of stock marks, | 0 50 |
| Recording any receipt required by law to be recorded, | 0 25 |
| Recording any certificate of marriage, | 1 00 |
| Recording bond of any county officer, or any similar bond, | 0 50 |
| Recording each certificate of election, or apppointment to office, | 0 50 |
| Recording any instrument less than one folio, | 0 50 |
| Certificate and seal, | 0 25 |
| Making copies of any record or paper, for each folio, | 0 25 |
| Filing each paper required by law to be filed, | 0 10 |

Fees of county auditors.

SEC. 11. The fees of county auditors shall be as follows:

| | |
|---|---|
| Making out assessment or census roll, and delivering the same to the county assessor, for each quire such roll may contain, | 8 00 |
| Making out original tax duplicate, for each folio, counting two figures as one word, | 0 25 |
| Making out exhibit of the receipt and expenditures of county for past year, for each folio, counting two figures as one word, | 0 25 |
| Making settlement of his or another person's account, with the county, | 0 50 |
| Filing any paper, exhibit, or document, required by law to be filed in his office, | 0 10 |
| Making certified copy of any proceeding in his office, for each folio, | 0 20 |

SEC. 12. The clerks of the several boards of commissioners shall receive the following fees:

Fees of clerks of board of commissioners.

| | |
|---|---|
| For each day's attendance at a regular or special session of the board of commissioners, | $3 00 |
| Recording the proceedings of the board, for each folio, | 0 20 |
| For each order drawn on the county treasurer, | 0 10 |
| For each certified copy of any order of the board, | 0 25 |
| Making out any appointment in pursuance of any order of the board, | 0 50 |
| For drawing each receipt, | 0 10 |
| Each notice of a general or special election, delivered to a sheriff, | 0 50 |
| Opening and examining election returns, and making abstract of votes, and copies thereof, for each day, | 3 00 |
| For each certificate of election, | 0 25 |
| For each order for a view of a road, | 0 50 |
| Taking bond from a county officer, or from any person required by law to give bond to commissioners, | 1 00 |
| Taking and certifying any oath of a county officer, or other person, | 0 25 |
| Administering an oath, | 0 10 |
| For each deed executed by county commissioners to purchasers of county property, | 2 00 |
| For each poll book delivered to a sheriff or judges of election, | 1 00 |
| Issuing a license, under seal, to keep a grocery, ferry, or to pedlers, showmen, or any other person, to be paid by the person or persons to whom such license may be issued, | 1 00 |
| Entering grant of license on record, | 0 25 |
| Issuing any writ ordered by the board, or required by law, | 0 50 |
| Drawing and certifying each list of grand or trial jurors, | 1 00 |
| Filing a bond, receipt, bill, order, appointment, resignation, report, deed, affidavit, or other paper, required by law to be filed, | 0 10 |
| Reading and entering a petition to view a road, (to be paid by the petitioners,) | 0 50 |
| Reading and entering a remonstrance against the same, or petition for damages, (to be paid by the person making the same,) | 0 50 |
| Entering appointment of road viewers, | 0 50 |
| Reading and entering report of road viewers, | 0 50 |
| Making a settlement of his accounts, or those of any other person, with the county, | 0 50 |
| Notifying each justice of the peace to attend the opening and examination of election returns, | 0 25 |
| Making a certified copy of commissioners' proceedings, or parts thereof, for each folio, | 0 20 |

Fees of jurors.

SEC. 13. The fees of jurors shall be as follows:

| | |
|---|---|
| For every day's attendance upon the District Court, as a grand or trial juror, | 2 00 |
| Every juror sworn in a justices' court, or before a sheriff, or other officer, upon a writ of inquiry or otherwise, | 1 00 |
| Each juror sworn upon a coroner's inquest, | 2 00 |

For each talesman acting as a juror, the same amount per day as jurors regularly summoned.

Fees of witnesses.

SEC. 14. The fees of witnesses shall be as follows:—

| | |
|---|---|
| For each day's attendance before the District Court, - | $2 00 |
| For each day's attendance before a justice of the peace, arbitrators, referees, sheriff, coroner, or other officer, - | 1 50 |

But in no case shall a party in any court recover costs for more than three witnesses, unless the court shall certify that a larger number were necessary to maintain the party's cause of action or defence, and the court shall enter an order for the payment of costs to such as it shall certify to be necessary beyond them.

Fees of commissioner to take depositions.

SEC. 15. Every commissioner authorized to take depositions, shall be entitled to receive the same fees as are allowed to justices of the peace for the same services.

Fees of notaries.

SEC. 16. The fees of notaries public shall be as follows:—

| | |
|---|---|
| For every protest of a bill of exchange, or promissory note, | $1 00 |
| Attesting any instrument of writing, and seal, - - | 1 00 |
| Noting a bill of exchange, or promissory note, for non-acceptance, or non-payment, - - - | 1 00 |
| Registering protest of bill of exchange, or promissory note, | 1 00 |
| Certifying an affidavit, and all other certificates, under seal, | 1 00 |
| Taking the acknowledgment of any deed, or other instrument of writing, - - - - - - | 1 00 |
| Drawing an affidavit, and administering an oath thereon, | 1 00 |
| Drawing and taking proof of any legal instrument, each folio, - - - - - - - | 25 |
| Taking depositions for each folio, - - - - | 25 |
| For administering an oath, or affirmation, - - | 25 |

Fees of appraisers.

SEC. 17. All appraisers of property taken on a writ of attachment or replevin, persons appointed to assign dower or make partition of real estate, and all other private persons performing like services required by law, or in the execution of legal process, when no express provision is made for compensation, shall be entitled to one dollar for each day so employed, and mileage each way, at the rate of ten cents per mile.

Mileage of officers.

SEC. 18. Every coroner, sheriff, constable, juror and witness, and every other officer and person mentioned in this act, who shall be required to travel, in order to execute or perform any public duty, in addition to the fees hereinbefore limited and declared, shall be entitled to mileage, at the rate of ten cents for each mile actually travelled, in going to and returning from the place where the service is performed.

Mileage for sheriff and constables, how computed.

SEC. 19. Mileage for any service by sheriffs and constables shall, in all cases, be computed from the court-house or place of holding court, in the county in which the officer performing the service resides; but when two or more persons named in the same writ or process live in the same direction, mileage fees shall be charged only from the farthest.

Fees, when fixed by District Court.

SEC. 20. When any service shall be performed by any officer of the District Court, for which no compensation is provided in this act, he shall be entitled to such fee as the court in which the service is performed shall determine; when the same is performed by any officer or person not in any district court, such compensation shall be determined by the board of commissioners of the proper county.

"Folio" defined.

SEC. 21. The term "folio," when used as a measure for computing fees or compensation, shall be construed to mean one hundred words, counting every two figures as one word; and every portion of a folio, when, in the whole draft or paper, there shall not be a complete folio, and when there shall be any excess over the last folio, shall be computed as a folio.

Officer to hang up fee list.

SEC. 22. Every officer whose fees are hereinbefore ascertained and limited, shall publish and set up, in some conspicuous place in his office, a fair table of his fees, for the inspection of all persons interested; and a failure or neglect to do so shall subject the officer so failing or neglecting to pay a fine of one dollar per day for each day that the same shall not be put up, which fine shall be recovered by a civil action before a justice of the peace, for the use of the proper county.

Fees in case of special provision.

SEC. 23. The allowance of any fees by this act, shall not apply to any case where special proviso is otherwise made by law for any particular service, but the fees for such service shall be such as are provided by the statute requiring the service or providing the compensation therefor.

Penalty for taking extra fees.

SEC. 24. No judge, justice of the peace, sheriff, constable, clerk, or other officer mentioned in this chapter, to whom any fees or compensation shall be allowed by law for any service, shall take or receive any greater fee or reward for such service, but such as is or may be allowed by the laws of this territory.

Ib.

SEC. 25. A violation of the last section shall be deemed a misdemeanor, and the person guilty shall, upon conviction before a justice of the peace, be fined twenty-five dollars for each illegal fee so taken, one-half to be paid to the person suing therefor, and the other half into the county treasury.

Receipt for fees, when to be given.

SEC. 26. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out and deliver to such person a particular account of such fees, specifying for what they respectively accrued, and shall receipt the same; and if he neglect or refuse, he shall be liable to pay the party aggrieved twenty-five dollars, to be recovered before a justice of the peace.

Witness fees, when and how to be entered by clerk.

SEC. 27. The clerk of any court of record shall, on the application of any witness to have his fees allowed, enter in his fee book, under the style of the cause in which the witness was summoned or recognized, the name of the witness, the number of days he has attended, and the number of miles he had necessarily to travel in consequence of the summons or recognizance, and shall swear the witness to the statement contained in the entry, and witnesses shall claim their attendance at each term of court, as they attend, and not afterwards.

Extra allowances in Jackson and Coos.

SEC. 28. In the counties of Jackson and Coos, the officers mentioned in this chapter, and all other county officers therein, also jurors and witnesses, shall be entitled to one hundred per cent. additional fees, to those prescribed by law, for officers, jurors and witnesses, in the other counties of this territory; but this section shall not be so construed as to increase the amount of one hundred dollars to be paid judges of probate out of the county treasury.

Viewers, reviewers and supervisors.

SEC. 29. The compensation of viewers and reviewers of county roads, and supervisors of roads, shall be two dollars per day; and so much of an act entitled an act relating to roads and ferries, passed January 27, 1854, as conflicts with this section, is hereby repealed.

Assessors.

SEC. 30. The fees of assessors shall be four dollars per day; and so much of an act, passed January 26, 1854, entitled an act relating to assessors, as conflicts with the provisions of this section, be, and the same is hereby repealed.

Repeal of other enactments.

SEC. 31. That an act, passed January 30, 1854, entitled an act to regulate the fees of certain officers and other persons, be, and the same is hereby repealed: *Provided*, That this act shall not be considered as applicable to the county of Clatsop, nor repeal any act now in force in said county.

Ib.

SEC. 32. That section 6 of chapter 8 of an act regulating proceedings at law in the Supreme and District Court, be, and the same is hereby repealed.

Act, when to take effect.

SEC. 33. This act shall take effect from and after the first day of May next.

*Passed January 19th*, 1855.

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## *AN ACT* RELAING TO ROADS AND FERRIES.

## CHAPTER I.

### ROADS AND FERRIES.

TITLE I. *Of Locating County Roads.*
TITLE II. *Of Locating Private Ways.*
TITLE III. *Of the Manner of Locating Territorial Roads.*
TITLE IV. *Of Road Supervisors, and their Duties.*
TITLE V. *Of the Regulation of Ferries.*

### TITLE I.

### *Of Locating County Roads.*

SEC. 1. All county roads under supervision of commissioners.
2. Application for laying out, altering, &c., roads, to be by petition.
3. Proof of notice to accompany petition.
4 Viewers, when and how to be appointed; order of commissioners to viewers.
5. Viewers, when to meet, oath of, &c.

SEC. 6. Report of viewers, what to contain; proceedings of commissioners on report.
7. Petition for review; commissioners when to grant petition.
8. Report of reviewers to be conclusive.
9. When person conceiving himself to be injured, may complain; commissioners to appoint persons to assess damages.
10. Commissioners may order damages so assessed to be paid, or refuse to establish road.
11. When appeal may be made from assessment to district court; appeal how tried.
12. When commissioner may order road to be laid out; surveyor how to proceed; return of survey; allowance to surveyor and assistants.
13. Return of surveyor to be recorded; width of road.
14. Proceedings when beginning or corner of road becomes uncertain.
15. Petition of land owner to turn road through other part of his lands; viewers when to be appointed; their report; petition when to be allowed.
16. Compensation of viewers; liability for neglect.
17. Bond required of petitioners before view or review given.

Roads under supervision of commissioners.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all county roads shall be under the supervision of the board of county commissioners of the county wherein the said roads are located, and no county road shall be hereafter established, nor shall any such road be altered or vacated in any county in this territory, except by the authority of the board of county commissioners of the proper county.

Applications for laying out, &c.

SEC. 2. All application for laying out, altering or vacating county roads, shall be by petition to the board of county commissioners of the proper county, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, altered or vacated, which petition shall specify the place of beginning, the intermediate points, if any, and the place of termination of said road.

Ib. To be accompanied with proof of notice.

SEC. 3. When any petition shall be presented for the action of the said board, for the laying out, alteration, or vacation of any county road, it shall be accompanied by satisfactory proof that notice has been given, by advertisement posted up at the place of holding the County Commissioner's Court, and also in three public places in the vicinity of said road, or proposed road, thirty days previous to the presentation of said petition to the board, notifying all persons concerned, that application will be made to the said board, at their session, for laying out, altering or vacating such road, (as the case may be.)

Viewers.

SEC. 4. Upon the presentation of such petition, and proof that notice has been given as provided in the last section, the board of commissioners shall appoint three disinterested householders of the county as viewers of said road, and shall issue an order directing said viewers to proceed, on a day named in such order, or on their failing to meet on that day, within five days thereafter, to view and lay out, alter or vacate such road.

Ib. When to meet, oath, &c.

SEC. 5. The viewers so appointed, after receiving at least five days' previous notice from one of the petitioners, shall meet at the time and place specified in the order of the commissioners, or within five days thereafter, and after taking an oath or affirmation before some person authorized to administer oaths, faithfully and impartially to discharge the duties of their appointment, shall forthwith proceed to view the road proposed to be vacated, or to view, select and mark said road as proposed to be laid out or altered, according to the prayer of the petitioners, or as near the same as, in their opinion, a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience and expense which will result to individuals as well as to the public, if such road shall be established or altered.

Report of viewers.

SEC. 6. The viewers, or a majority of them, after having examined or viewed the road proposed to be laid out, altered or vacated, as prescribed in the last section, shall report, in writing, to the board of commissioners, at their next regular session, stating the general face of the country over which the said road passes, its general necessity and utility, and whether, in their opinion, said road should be laid out, altered or vacated as prayed for by the petitioners; and if the said viewers, or a majority of them, shall report unfavorably, the said road shall not be laid out, altered or vacated. If such report shall be favorable, it shall be the duty of said commissioners to cause the same to be publicly read, on two different days of the same meeting, and then laid over until their next regular session; and if no application shall be made to them for a review or alteration of said road, or petition for damages, between the first day of the session at which the report is made, and the second day of their next regular session, the report of the viewers shall be confirmed and adopted.

Petition for review.

SEC. 7. When the viewers shall have reported in favor of the prayer of the petitioners, as provided in the preceding section, it shall be lawful for any householder of the county, at any time before such report shall be confirmed and adopted, to apply to the commissioners for a review of said road, by petition signed by at least twelve householders residing in the vicinity of such road, or proposed road; and the commissioners shall, on such petition being presented, and they satisfied that it was just and reasonable, appoint five disinterested householders of the county to review said road, and shall issue an order to said viewers, directing them to proceed on a day named in such order, or within five days thereafter, to review the same and report thereon.

Ib. Report of viewers.

SEC. 8. The viewers so appointed to review such road, or a majority of them, after having received at least five days' previous notice by one of the petitioners for the review, and after taking an oath or affirmation, as prescribed in section five, shall proceed to examine the road or proposed road, viewed by the former viewers, and shall make a report in writing to the board of commissioners at their next regular session, stating their opinion in favor of or against such road, and their reasons for the same; and if the viewers, or a majority of them, be in favor of laying out, altering or vacating such road, as recommended by the former viewers, such report shall be adopted and confirmed by the commissioners at the same session at which it was received; but if such report be against laying out, altering or vacating such road, as recommended by the former viewers, no further proceedings shall be had thereon before the commissioners.

Provision in case of person conceiv-

SEC. 9. If any person, through whose lands any county road may be viewed and marked out, shall feel that he would be injured by ing himself aggrieved.

the opening of the same, such person may make complaint thereof in writing, to the board of county commissioners, at any time after the report of the viewers, appointed to review said road, is received, and before the second day of the next regular session of the commissioners; and if such complaint be made, the commissioners shall appoint three disinterested householders of the county, who shall meet at such time as may be designated by the commissioners, or at such time as may be agreed upon by such householders, and after having been duly sworn or affirmed to discharge their duty faithfully and impartially, shall proceed and view said proposed road the whole distance through the premises of the complainant, and assess and determine how much less valuable such premises of the complainant would be rendered by the opening of said road, and they shall report the same in writing to the commissioners, at their next regular meeting thereafter.

When commissioners may order damages assessed to be paid, or refuse to establish road.

SEC. 10. If the commissioners be satisfied that the amount of damages so assessed and determined is just and equitable, and that the proposed road will be of sufficient importance to the public to cause the damages so assessed and determined to be paid by the county, they shall order the same to be paid to the complainant, out of the county treasury; but if, in their opinion, such proposed road is not of sufficient importance to the public to cause such damages to be paid by the county, they may refuse to establish the same as a public highway, unless the expenses or damages, or such part thereof as the commissioners may think proper, shall be paid by the petitioners.

Appeal to District Court.

SEC. 11. Any complainant who may conceive himself aggrieved by the assessment of damages as prescribed by the last two sections, may, within twenty days after such report is adopted by the commissioners, appeal therefrom to the District Court of the proper county; such appeal shall be tried in the District Court, in the same manner as appeals from justices of the peace, and if the appellant shall fail to recover a judgment more favorable than the report appealed from, he shall pay all costs of the appeal.

When commissioners to order road to be laid out.

SEC. 12. When the report of the viewers appointed to view and lay out, alter or vacate any road shall be confirmed and adopted, and the damages assessed and determined, if any shall be ordered by the commissioners to be paid, they shall order such road to be laid out, altered or vacated, according to the report of the viewers, and shall forthwith issue an order, under the seal of the board of commissioners, to some skilful and competent surveyor, directing him forthwith to survey said road as located and marked by the viewers; and such surveyor shall take to his assistance two chainbearers and one marker, and proceed to survey such road, and cause the same to be conspicuously marked throughout, noting the corners and distances, and, at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road or survey, to be marked on a tree or monument erected for that purpose; and he shall make out a correct and certified return of the survey of said road, and a plot of the same, and deliver said return and plot to the commissioners or their clerk, on or before the day of their first regular meeting, next ensuing

Surveyor, how to proceed.

Return of survey.

after the date of the order of the survey of said road, and he shall also furnish at the same time a true and certified account of the time necessarily employed in making such survey; and the board of commissioners shall immediately thereupon direct orders to be drawn on the county treasurer for the payment of the same, allowing the surveyor six dollars for each day necessarily employed in the survey and making the return and plot, and the chainbearers and marker each three dollars for every day necessarily employed by said surveyor in the survey of said road.

Allowance of surveyor and assistants.

SEC. 13. Upon receiving the return and plot of any road, the commissioners shall order the same to be recorded in a book, to be kept for that purpose; and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order directing the same to be opened; and all county roads shall be sixty feet in width, unless the commissioners shall, upon the prayer of the petitioners for the same, determine on a less number of feet in point of width.

Return to be recorded.

Width of road.

SEC. 14. When the place of beginning or true corner of any public road shall become uncertain, by reason of the removal of any marked tree or monument by which such road was designated, or from any other cause, the board of commissioners of the proper county may appoint three disinterested householders of the county to review, and, if they deem it necessary, to straighten such road; and the reviewers shall cause the said road to be correctly surveyed and marked throughout, as in case of new roads, and shall make a return of the survey and plot of such road to the commissioners of the proper county, who shall cause the same, if approved by them, to be recorded, as in other cases; and from thenceforth such road, surveyed as aforesaid, shall be considered as a public highway.

Proceedings when beginning or corner of road becomes uncertain.

SEC. 15. If any person or persons, through whose lands any public highway is or may be established, shall be desirous of turning such road through any other part of his or their lands, such person or persons may, by petition, apply to the commissioners of the proper county, to permit him or them to turn such road through any other part of his or their land, on as good ground, and without materially increasing the distance, to the injury of the public; and on the receipt of such petition, accompanied by a sufficient bond or undertaking to pay the costs and expenses to be incurred thereby, the commissioners shall appoint three disinterested householders as viewers, and a surveyor, who, or a majority of such viewers, shall proceed to view the ground over which the road is proposed to be turned, and ascertain the distance such road will be increased by the proposed alteration, and make out a report in writing, stating the several distances so found, together with their opinion as to the utility of making such alteration; and if the viewers, or a majority of them, shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable, and that the proposed alteration will not place the road on worse ground, or materially increase the distance to the injury of the public, they shall order the same to be so altered; and upon receiving satisfactory evidence that the proposed new road has been opened a legal

Petition of land owner to turn road through other part of his land.

Viewers when appointed.

Their report.

Petition when allowed.

width, and in all respects made equal to the old road for the convenience of travellers, the commissioners may declare such new road a public highway, and make record thereof, and at the same time vacate so much of the old road as is embraced in the new, and the person or persons petitioning for the alteration, shall pay all the costs and expenses of the view, survey and return of such alteration.

Compensation of viewers and reviewers.

Penalty for neglect.

SEC. 16. The compensation of viewers and reviewers shall be four dollars for every day that they shall be necessarily employed in discharging their duties; and if any such viewer or reviewer shall refuse or neglect to perform the duties required by this chapter, without making satisfactory excuse for such refusal or neglect, he shall be fined by the commissioners in any sum not exceeding ten dollars, to be recovered by action before a justice of the peace of the proper county, which fine, when collected, shall be paid over without delay into the county treasury.

Bond of petitioners before order for view or review.

SEC. 17. Upon application being made under the provisions of this chapter, for a view or review of any public road proposed to be laid out, altered or vacated, the commissioners shall, before issuing their order to the viewers, require a bond or undertaking to be executed by one or more of the petitioners for such view or review, with sufficient surety, to be approved by the commissioners or their clerk, and made payable to the board of commissioners, in such sum as they shall direct, not exceeding two hundred dollars, conditioned that if the prayer of the petitioners be not granted and allowed, the persons executing such bond or undertaking will pay all costs and expenses that may be incurred by reason of such view or review.

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## TITLE II.

### *Of Locating Private Ways.*

SEC. 18. Application for private ways, viewers, how appointed; their oath; notice of view; location of road, assessment of damages.
19. Report of viewers, what to contain; when to be confirmed.

Application for private way.

Appointment; viewers; oath of.

Notice of view.

SEC. 18. Any person whose land shall be so situated that it has no connection with any public road, may make application in writing to the board of commissioners of his county, at a regular session, for a private road leading from his premises to some convenient public road, and thereupon the said commissioners shall appoint three disinterested householders of the county as viewers, and shall issue an order directing them to meet on a day named in such order, to view and locate a private road according to the application, and to assess the damages to be sustained thereby; and after being duly sworn or affirmed faithfully and impartially to discharge the duties of their appointment, and after at least three days' notice, given to all persons through whose lands such private road is to be located, such viewers shall proceed to locate and mark out a private road, thirty feet in width, from some certain point on the premises of the applicant, to some certain point on the public road, so as to do the least damage to the lands through which such private road is located, and they shall also, at the same time, assess the damages sustained by the person or persons owning such lands.

Report of view.

SEC. 19. The viewers so appointed, or a majority of them, shall make a report to the commissioners at their next regular session, of the private road so located by them, and also the amount of damages, if any, assessed by them, and the person or persons entitled to such damages; and if the commissioners are satisfied that such report is just, and after payment by the applicant, of all costs of locating such road, and the damages assessed by the viewers, they shall order such report to be confirmed, and declare such road to be a private road, and the same shall be recorded as such, and any person aggrieved by the assessment of damages, may appeal, within twenty days after such confirmation of the report, to the District Court, and such appeal shall be tried as appeals from the assessment of damages in case of county roads.

Ib When confirmed.

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## TITLE III.

### *Of the Manner of Locating Territorial Roads.*

SEC. 20. Territorial roads, how to be located.
21. Proceedings by commissioners; reports of surveys when to be delivered to the secretary and county commissioners.
22 Commissioners to render account for services; account how paid.
23. Complaint of persons against road, when to be made, and proceedings thereon.
24. Road to remain a highway, how to be opened and worked; proviso

Location.

SEC. 20. Every territorial road, to be hereafter located, shall be viewed, surveyed, and returns thereof made, according to the provisions of this chapter, within one year from the passage of the act authorizing such road to be laid out; and the width of all territorial roads shall be sixty feet.

Proceedings by commissioners.

SEC. 21. The commissioners appointed to locate any territorial road, after having taken an oath or affirmation faithfully and impartially to discharge the duties of their appointment, shall proceed to view and locate such road, and shall cause the same to be correctly surveyed and marked throughout, from the beginning to the end, in the same manner that county roads are required to be surveyed and marked; and such commissioners, or a majority of them, shall make a report, descriptive of the general face of the country over which such road passes, accompanied by a plot of the survey certified by the surveyor; which report and plot shall, within sixty days after the view and survey, be delivered to the secretary of the territory, to be by him filed and recorded; and within the same period of sixty days, they shall in like manner deposit in the office of the clerk of the board of county commissioners of each county, through which such road passes, a report and plot as aforesaid, of so much of said road as shall be located in such county, to be there recorded as aforesaid.

Ib. Report.

Ib. Account for services.

SEC. 22. The commissioners appointed to locate any territorial road shall, after the completion of the survey of the same, make out a certified account of all the services rendered, as well by themselves as by the surveyor, and other persons employed, charging each county, through which said road may have been laid out, a proportion of the expenses, according to the number of days employed in such county; and the board of county commissioners shall audit, and order the same to be paid out of the county treasury.

Complaint of persons likely to be injured by road.

SEC. 23. When any person, through whose lands any territorial road may be located, shall conceive that he would be injured by the opening of the same through his premises, he may, within six months after the filing of the report and plot of survey of such road, in the office of the clerk of the board of commissioners of such county, make complaint in writing to such commissioners, setting forth such damage; and thereupon the same proceedings shall be had to assess and determine the damages sustained by such complainant, as in case of county roads, and such damages shall be paid out of the treasury of the county in which the lands are situated.

Road to remain a highway; how opened and worked.

SEC. 24. When any territorial road shall have been located, according to the provisions of this chapter, the same shall be and remain a public highway, and shall be opened and worked by the counties through which it may be laid out, as county roads are; and such road may be altered or changed in any county, in the same manner as county roads are altered: *Provided*, That all territorial and county roads which have been or may hereafter be located for the term of two years and not opened, shall be considered as vacated.

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## TITLE IV.

### *Of Road Supervisors and their Duties.*

SEC. 25. County, how divided in road districts.
26. Supervisor, how appointed, term of office, oath, bond, &c.
27. Lists by supervisors; how made.
28. Estimates and assessment by supervisor.
29. Names of persons omitted on list may be subsequently inserted.
30. Notification by supervisor; penalty for neglecting to obey notice or orders.
31. Ib. Process not to issue if such default arise from sickness.
32. Persons notified, when and how required to appear.
33. Fines, how collected, proceeds, how applied.
34. Duties and power of supervisor.
35. Complaint against supervisor, when and how to be made.
36. Supervisor to erect finger boards on cross roads, &c.
37. To remove obstructions and repair bridges and roads.
38. Extra labor of individuals, how provided for
39. Accounts of supervisor, when and to whom to be presented; settlement, how enforced.
40. Proceedings, when supervisor is unable to collect fine.
41. Liability of supervisor for misconduct.
42. Compensation of supervisor.

Road districts.

SEC. 25. The several boards of county commissioners shall, as often as they may deem necessary, but not oftener than once a year, divide their respective counties, or any part thereof, into suitable and convenient road districts, and cause a brief description of the same to be entered on the county records.

Supervisor, his appointment.

SEC. 26. The board of commissioners shall annually, at their session in April, appoint one supervisor of roads for each road district in the county, and may, at any time, fill vacancies that may occur in such office, and they shall cause the supervisors by them appointed, to be notified thereof in writing. Each supervisor shall hold his office until the following April session of the commissioners, and before entering upon the discharge of his duties, shall take an oath or affirmation, faithfully to discharge the duties of his office, and, if required by the commissioners, shall execute an undertaking to the board of commissioners, with one or more sureties, in any sum specified by them, not exceeding one thousand dollars, conditioned that he will faithfully account for and pay over according to law, all moneys that may come into his hands by virtue of his office.

Term of office, oath, bond, &c.

Supervisor to make list.

SEC. 27. It shall be the duty of every supervisor of roads, on or before the fifteenth day of May, to obtain the names and make out, in alphabetical order, a list of all persons liable to perform labor on the public roads, residing within his road district, and to affix to each name therein the number of days' work which such person shall be assessed to perform.

Estimate and assessments.

SEC. 28. In making such estimate and assessment, the supervisor shall proceed as follows:

1. He shall apportion the labor to be performed in his road district, according to the valuation of taxable property, owned by each person residing or owning real property therein, in the ratio of one day's work for each and every two thousand dollars assessed for county rates, the last preceding year: *Provided*, That any person may, in lieu of each day's work, to be performed according to this act, pay into the hands of the supervisor the sum of two dollars per day, to be expended in labor on the public road in said road district;

2. He shall assess two additional day's work, to be performed by every male between eighteen and fifty years of each, except persons who are a public charge, or too infirm to perform labor.

Names of persons omitted on list, may be subsequently inserted.

SEC. 29. Whenever the supervisor shall, from any cause, have neglected or omitted to place on his list, and assess any person within the time required by law, he shall at any time afterwards place the name of such person on the list, and assess the number of day's work to be performed by him, which assessment shall in all respects be valid, as if made in due time.

Notification by supervisor

SEC. 30. The supervisor shall notify every person within his road district, subject to road labor as aforesaid, between the first days of April and October annually, to perform the work assessed on the public roads within his district, and if any person subject to road labor as aforesaid, shall, after three days' previous notice, either personally or by writing, left at his usual place of abode by the supervisor or any other person by direction of the supervisor, neglect or refuse to attend by himself, or suitable substitute, at the time and place designated by the supervisor; or, having attended, shall refuse to obey the directions of the supervisor, or shall pass his time in idleness and inattention to the duties assigned him, every

Neglecting to obey notice, &c.

such delinquent shall forfeit and pay for each day he shall neglect or refuse to attend, or for any of the offences above specified in this section, the sum of five dollars, to be recovered in a civil action at the suit of the supervisor, before any justice of the peace having jurisdiction; or if the aggregate amount of such sums be over one hundred dollars, by action in the District Court; and all money so collected shall be appropriated as hereinafter directed.

Ib. If from sickness, &c.

SEC. 31. Whenever it shall happen in consequence of sickness, absence from home, or any other good cause, that a person liable to perform work as aforesaid, does not attend, in obedience to the notice of the supervisor, at the time and place appointed, and such person is willing to perform, or cause to be performed, the labor required by this chapter, no process shall be issued for the recovery of the penalty above prescribed, but the supervisor shall employ such person, or his substitute, at another time and place, to be designated by such supervisor.

When and how required to appear.

SEC. 32. Every person notified to labor on the public roads, under the provisions of this chapter, shall be required to appear at the place appointed by the supervisor, at the hour of eight o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct; and such supervisor may, if he deem it necessary, order any person owning the same to furnish a team of horses, mules or oxen, and wagon, cart, scraper or plough, to be employed or used on the roads, under the direction of such supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plough, in discharge of any labor due from such person.

Fines, how collected; proceeds, how used.

SEC. 33. It shall be the duty of every supervisor to collect by suit or otherwise, in his own name, as such supervisor, all fines, forfeitures and penalties, arising and accruing under the provisions of this chapter, for the non-performance of labor, and to expend the same in the employment of men, when necessary, to put the public roads of his road district in good repair; and if any portion of the moneys collected by him shall not be so expended, he shall pay the same over to the county treasurer, on or before the first of April, annually, and take his receipt for the same, which receipt shall be a proper voucher, for the supervisor to settle with the county commissioners for the amount thereof; and the commissioners shall cause all moneys so paid into the county treasury, to be appropriated to repairing the roads in such road district, where such fine, forfeiture or penalty accrued.

Duties and power of supervisor.

SEC. 24. The supervisors of roads shall open, or cause to be opened all public roads, which may have been, or may hereafter be laid out and established according to law, in any part of his road district, and shall keep the same in good repair; and he shall have authority to purchase with any money which may come into his hands as supervisor, for the use of his road district, any ploughs, scrapers or other implements, which he may think proper; and to enter upon any lands adjoining or near the public road, and gather, dig and carry away any stone, gravel or sand, and cut down and carry off any trees or wood, necessary for the making and repairing any public road; and to purchase and pay for any timber, plank or other materials necessary for making or repairing any public road in his district; and to enter upon any lands adjoining or lying near any public road in his road district, and cut, open, or construct such drains and ditches, as he shall deem necessary for the making or preservation of such road, doing as little injury as may be to such lands; and any person stopping or obstructing the drains or ditches so made, shall forfeit the sum of twenty dollars for each offence, to be recovered and appropriated as provided in the last section.

Complaint against supervisor.

SEC. 35. If any person shall feel aggrieved by the act of any supervisor cutting or carrying away timber or stone as aforesaid, he may make complaint thereof in writing to the county commissioners, at any regular meeting within six months after the cause of such complaint shall exist, and such commissioners shall proceed to assess and determine the damages, if any, sustained by the complainant, and cause the same to be paid out of the county treasury.

Finger-boards.

SEC. 36. Every supervisor shall erect and keep up at the forks of every highway, and every crossing of public roads within his road district, a guide or finger board, containing an inscription in legible letters, directing the way and specifying the distance to the next town or public place situated on each road respectively.

Repairing bridges, roads, etc.

SEC. 37. If, at any time during the year, any public road shall become obstructed by the falling of timber, or from any other cause, or any bridge shall be impaired or become dangerous for the passage of teams or travellers, the supervisor of the road district, upon being notified thereof, shall forthwith cause such obstruction to be removed, or bridges repaired; for which purpose he shall immediately order out such number of the inhabitants of his district, as he may deem necessary to remove such obstruction, or repair such bridge; and all persons so ordered out shall, after having received one day's notice, be subject to the same restrictions, and liable to the same penalties, as if ordered out under the thirtieth section of this chapter.

Extra labor of individuals.

SEC. 38. In all cases when any person shall, under the direction of the supervisor of roads, perform more labor upon the public roads than may be due from him, the supervisor shall give such person a certificate specifying the amount of extra labor so performed, which certificate may be transferred, and received in discharge of the labor of any other person, within the same road district, to the amount of labor specified in such certificate, or may be received from the holder in satisfaction of labor on the roads, in such road district, in any subsequent year, for the amount of labor specified therein.

Accounts of supervisor.

SEC. 39. Every supervisor shall keep an account of the number of days' work performed on the public roads in his road district, and of the persons performing the same; he shall also keep an account of all moneys received by him from delinquents or for fines or penalties, and the persons from whom received; and also an account of his expenditures as supervisor during his term of office, and such supervisor shall present his accounts to the board of com-

Settlement of supervisor

missioners for settlement, at their April session, in each year, and shall pay over to the county treasurer all moneys remaining in his hands as such supervisor, taking a receipt therefor; and if any supervisor shall fail to appear and make a settlement as required in this section, the board of county commissioners may, by an action in the District Court of the proper county, against such supervisor, enforce such settlement and recover any balance remaining in his hands.

Proceedings when supervisor is unable to collect fine

SEC. 40. In all cases where the supervisors of roads shall be unable to collect from any delinquent the amount of any tax, forfeiture, fine or penalty, as provided in this chapter, it shall be the duty of such supervisor to return a list of such delinquents, certified on oath, to the board of commissioners of the county, at their session in April, and the commissioners shall, after adding ten per cent. to the amount due by such delinquent, furnish the sheriff of the proper county with a true copy of such list, and the amount due from each, with a precept thereto attached, under seal of said board of commissioners, and the sheriff shall thereupon proceed to collect the same in like manner, and under the same provisions, that the county revenue is collected.

Misconduct.

SEC. 41. Any supervisor of roads, who shall neglect or refuse to perform the several duties enjoined upon him by this chapter, or who shall, under any pretence whatever, give or sign any receipt or certificate, purporting to be a receipt or certificate for money paid and labor performed, unless the money shall have been paid or the labor performed, prior to the giving or signing such receipt or certificate, shall forfeit for every such offence not less than five, nor more than fifty dollars for the use of his county, to be recovered before any justice of the peace having jurisdiction of the same, in the name of the board of commissioners, and it is hereby made the duty of the commissioners to sue for the same: *Provided*, That if any supervisor conceive himself aggrieved by the decision of the justice of the peace, he may appeal to the District Court as in other cases.

Compensation.

SEC. 42. Every supervisor of roads shall receive, for each day necessarily employed in the performance of any of the duties required by this chapter, over and above the number of days' work required by law to be performed by such supervisor, the sum of three dollars, to be paid out of the county treasury, on the order of the board of commissioners, after being sanctioned by them, and after the report of the doings of said supervisor shall have been received, approved and settled by said board of commissioners.

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## TITLE V.

### *Of the Regulation of Ferries.*

SEC. 43. License for keeping ferries, by whom granted and for how long.
44. Tax on license to be paid before license granted.
45. License not to be granted except to owner of land, except, &c.
46. Notice of application to be posted; proviso
47. Applicants to give undertaking before license issued.
48. Obligations and duties of persons obtaining license.

SEC. 49. Passengers to be transported at all hours, unless in cases of danger; fare payable in advance.
50. Rate of fare how established; penalty for extra charges
51. List of rates to be posted at ferry; penalty for neglect.
52 Precedence of passengers.
53 Exclusive right of ferry to transport passengers.
54. Liability of ferry masters; when to show cause, &c.
55. Penalty for keeping ferry without license.
56. Act, when to take effect; "An act regulating ferries" repealed.

SEC. 43. The board of commissioners of any county in this territory, may grant a license to any person, entitled and applying therefor, to keep a ferry across any lake or stream within their respective counties, upon being satisfied that a ferry is necessary at the point applied for; which license shall continue in force for a term to be fixed by the commissioners, not exceeding five years. License to keep ferry.

SEC. 44. The board of commissioners shall tax such sum as may appear reasonable, not less than one nor more than one hundred dollars per annum for such license, and the person to whom such license shall be granted, shall pay to the county treasurer the tax for one year in advance, taking his receipt therefor; and upon the production of such receipt, the clerk of the board of commissioners shall issue such license under the seal of the board of commissioners. Ib. Tax.

SEC. 45. Unless otherwise provided by law, no such license shall be granted to any person, other than the owner of the land embracing or adjoining such lake or stream where the ferry is proposed to be kept, unless such owner shall neglect to apply for such license; and whenever application shall be made for a license by any person, other than such owner, the board of commissioners shall not grant the same, unless proof shall be made that the applicant caused notice in writing, of his intention to make such application, to be given to such owner, if residing in the county, at least ten days before the session of the board of commissioners at which application is made. Ib To whom granted.

SEC. 46. Every person intending to apply for a license to keep a ferry at any place, shall give notice of such intention, by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular session of the board of commissioners, at which the application shall be made: *Provided*, That when application shall be made for the renewal of a license where the former license has expired, the same may be granted or renewed, without previous notice or petition. Notice of application. Proviso

SEC. 47. Every person applying for a license to keep a ferry, shall, before the same is issued, enter into a bond or undertaking with one or more sureties, to be approved by the clerk of the commissioners, in a sum not less than one hundred, nor more than five hundred dollars, conditioned that such person will keep said ferry according to law, and if default shall at any time be made in the condition of such bond or undertaking, damages not exceeding the penalty may be recovered by any person aggrieved, before any court having competent jurisdiction. Bond of applicants.

Obligations and duties of ferry masters

SEC. 48. Every person obtaining a license to keep a ferry, shall provide, and keep in good and complete repair, the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times, with suitable oars, setting poles and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skilful men to attend and manage the same; and he shall also, at all times, keep the place of embarking and landing in good order and repair, by cutting away the bank of the stream, so that persons and property may be embarked and landed without danger, or unnecessary delay.

Ib To transport passengers at all hours.

SEC. 49. Every person obtaining a license, as aforesaid, shall give constant and diligent attention to such ferry, from daylight in the morning until dark in the evening of each day, and shall moreover, at any hour in the night, if required, except in cases of evident danger, give passage to all persons requiring the same, on the payment of double the rate of ferriage allowed to be taken in the day time; and if he shall, at any time, neglect or refuse to give passage to any person or his property, he shall forfeit and pay to the party aggrieved, for every such offence, the sum of five dollars, to be recovered before any justice of the peace having jurisdiction; and he shall, moreover, be liable, in an action at law, for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered, for a failure or refusal to convey any person or property across such stream, when it is manifestly hazardous to do so, by reason of any storm, flood or ice; nor shall any keeper of a ferry be compelled to give passage to any person or property, until the fare or toll chargeable by law shall have been fully paid or tendered to such keeper.

Fare must be paid.

Rate of fare.

SEC. 50. Whenever the board of commissioners of any county shall grant a license to keep a ferry across any lake or stream, such board shall establish the rates of ferriage which may be lawfully demanded for the transportation of persons and property across the same, having due regard to the breadth and situation of the stream, and the dangers and difficulties incident thereto, and the publicity of the place at which the same shall have been established; and every keeper of a ferry, who shall, at any time, demand and receive more than the amount so designated for ferrying, shall forfeit and pay to the party aggrieved, for every such offence, the sum of five dollars, over and above the amount which shall have been illegally received, to be recovered before any justice of the peace having jurisdiction.

Ib. Penalty for extra charge.

List of rates to be posted up.

SEC. 51. Every person licensed to keep a ferry, shall post up, in some conspicuous place near his ferry landing, a written or printed list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall, at all times, be written or printed in a plain, legible manner, and posted up so near the place where persons shall pass across such ferry, that the same may be easily read; and if, at any time, such keeper shall neglect or refuse to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at such ferry, during the time of such delinquency.

Precedence of passengers

SEC. 52. All persons shall be received into the ferry boats and conveyed across the stream, over which such ferry shall be established, according to their arrival at the same; and if any keeper of a ferry shall act contrary to this regulation, he shall forfeit and pay the sum of three dollars for every such offence, to the party aggrieved, to be recovered before any justice of the peace having jurisdiction: *Provided*, That public officers on urgent business, post riders, couriers, physicians, surgeons and midwives shall, in all cases, be first carried over, where all cannot go at the same time.

Exclusive right to transport.

Proviso.

SEC. 53. Every person licensed to keep a ferry, according to the provisions of this chapter, shall have the exclusive privilege of transporting all persons and property over and across the stream where such ferry is established, and shall be entitled to all the fare arising by law therefrom: *Provided*, That nothing herein contained shall be construed to prevent any person from crossing over such stream at such ferry in his own boat, or to take in and carry over his neighbor, when the same is done without fee or charge, and not with intent to injure any person licensed to keep a ferry.

When to show cause, etc.

Proviso.

SEC. 54. If any person licensed to keep a ferry, shall fail to pay the tax assessed thereon, when due, or shall not provide and keep in good and complete repair, the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or shall neglect to employ a sufficient number of skilful and discreet ferrymen, as is provided in the forty-eighth section of this chapter, within three months from the time license shall be granted; or, if such ferry shall not at any time be kept in good condition and repair, agreeably to the provisions of this chapter; or if the same shall be abandoned, disused, or unfrequented for the space of six months, at any one time, it shall be lawful for the board of commissioners of the proper county, on complaint being made in writing, to summon the person licensed to keep such ferry, to show cause why such license should not be revoked, and to decide thereon according to the testimony adduced, and the laws of this territory, which decision when made shall be valid to all intents and purposes, but subject to an appeal to the District Court, within twenty days after such decision shall be made: *Provided*, That if any ferry shall be disused by reason of the stream, over which the same is established, being fordable at certain seasons of the year, or by reason of the travel being subject to periodical fluctuations, it shall not work a forfeiture, within the meaning of this section.

Keeping ferry without license.

SEC. 55. Any person who shall maintain any ferry, and receive pay for ferriage, without first obtaining a license for the same, shall pay a fine of ten dollars for each offence, to be collected for the use of the county, by suit before any justice of the peace having jurisdiction, and any person is hereby authorized to bring such suit: *Provided*, That it shall not be considered unlawful for any person to transport any other person or his property over any stream for hire, when it shall be made evident that there is no ferry, or that the ferry established at such place was not in actual operation at the time, or in sufficient repair to have afforded to such person or his property a safe and speedy passage.

TITLE 5. Act, when to take effect. "An act regulating ferries" repealed.

SEC. 56. This act shall take effect and be in force from and after its passage; and the act entitled "An act regulating ferries," passed the 27th day of September, 1849, is hereby repealed.

*Passed January 27th*, 1854.

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## *AN ACT* TO AMEND AN ACT ENTITLED "AN ACT RELATING TO ROADS AND FERRIES"

SEC. 1. Commissioners, when to appoint viewers and surveyor.
2. Viewers and surveyor, when and where to meet; oath of, &c.; to appoint assistants; survey, how made; report of survey; action of commissioners thereon; viewers, &c., may administer oath.
3. Compensation of viewers, reviewers and assistants.
4. County auditor to furnish supervisor with a list of petitioners; liability of petitioners.
5. Supervisor to file list of persons liable to labor on roads, with auditor; duty of auditor.
6. Supervisor, how to proceed in making estimate and assessment.
7. Commissioners' power to change territorial road limited.
8. When road may be vacated after being opened.
9. Unopened road, when deemed vacated
10. Compensation of supervisor.
11. Power of viewers to locate gates on private roads and assess damages.
12. Conflicting acts repealed.
13. Act, when to take effect.

Appointment of viewers and surveyor.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That upon the presentation of petition and proof that notice has been given, as provided in the third section of the first chapter of the act to which this is an amendment, the board of commissioners shall appoint three disinterested householders of the county as viewers of said road, and a skilful surveyor to survey the same; and shall issue an order directing said viewers and surveyor to proceed, on a day to be named in said order, or, on their failing to meet on said day, within five days thereafter, to view, survey and lay out or alter said road.

Duties of viewers and surveyor.

SEC. 2. That it shall be the duty of the viewers and surveyors appointed as aforesaid, after receiving at least five days' previous notice by one of the petitioners, to meet at the time and place specified in the order of the commissioners aforesaid, or within five days thereafter; and, after taking an oath or affirmation faithfully and impartially to discharge the duties of their appointments respectively, shall take to their assistance two suitable persons as chainbearers, and one marker, and proceed to view, survey and lay out or alter said road, as prayed for in the petition, as near the same as, in their opinion, a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience and expense, which will result to individuals as well as to the public, if such road shall be established and opened or altered; and the surveyor shall survey such road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the corners and distances; and, at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road or survey, to be marked on a tree or monument erected for that purpose: he shall also make out and deliver to one of the viewers, without delay, a correct, certified return of the survey of said road, and a plot of the same; and the viewers, or a majority of them, shall make and sign a report, in writing, stating their opinion in favor of or against the establishment or alteration of such road, and set forth the reasons of the same; which report, together with the plot and survey of said road or alteration, shall be delivered to the county auditor by one of the viewers, on or before the first day of the session of the county commissioners, then next ensuing; and it shall be the duty of the commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting; and, if no legal application shall be made to them for review of said road or alteration, or petition for damage, between the first day of their session, at which the report and survey are made, and the second day of their next regular session, and they are satisfied that such road will be of public utility, and the report of the viewers being favorable thereto, they shall cause said report, survey and plot to be recorded; and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order directing said road to be opened; but if the report of the viewers be against such proposed road or alteration, or if, in the opinion of the commissioners, the same shall be unnecessary, then no further proceedings shall be had thereon: *Provided*, That in all cases where any oath or affirmation is required to be taken by any person, under the provisions of this act, the same may be administered by the surveyor, or by one of the viewers or reviewers, who have previously been sworn or affirmed themselves: *Provided, further*, That it shall not be necessary to survey any county road the county commissioners shall order.

SEC. 3. The compensation of viewers, reviewers, chainbearers and markers, shall be two dollars, and the surveyor three dollars, for every day that they shall be necessarily employed in discharging their duties.

Compensation for viewers, employees, &c.

SEC. 4. It shall be the duty of the county auditor to furnish the supervisors of each road district, a list of petitioners for county roads, residing in their respective districts, and it shall be the duty of the supervisor to cause said petitioners to perform one day's labor each, in opening said road: *Provided*, That any person may, in lieu of each day's work to be performed according to this section, pay into the hands of the supervisors the sum of two dollars per day, to be expended in labor on the said road in said road district.

List of titioners.

SEC. 5. It shall be the duty of every supervisor of roads, on or before the fifteenth day of May, to obtain the names and make out, in alphabetical order, a list of all persons liable to perform labor on the public roads, residing within his road district, and file the same with the county auditor, whose duty it shall be to affix to each name the amount of taxable property owned by each person residing or owning real property therein, for county rates the last preceding year.

List of persons liable to work on road.

SEC. 6. In making such estimate and assessment, the supervisor shall proceed as follows: * * *

Supervisor, how to proceed in making estim'te and assessment.

First. He shall apportion the labor to be performed in his road district, according to the valuation of taxable property owned by each person residing or owning real property therein, in the ratio of one day's work for each and every two thousand dollars assessed for county rates the last preceding year: *Provided*, That any person may, in lieu of each day's work to be performed according to this act, pay into the hands of the supervisor the sum of two dollars per day, to be expended in labor on the public road in said district.

Second. He shall assess two additional days' work to be performed by every male between twenty-one and fifty years of age, except persons who are a public charge or too infirm to perform labor.

How far commissioners may change location of territorial road.

SEC. 7. That no board of county commissioners within any county in this territory, shall have power to vacate or change the location of any territorial road to a greater distance than one half mile from its original location, and that only where it may be necessary to avoid payment of damages, and intersect the original location in the nearest and best ground.

When such road may be vacated.

SEC. 8. That whenever any territorial or county road shall have been located according to the provisions of the act to which this is an amendment, and any part of such road within any road district, shall have been opened and worked by the supervisors of such road district, under the provisions of law, such portion of such road as lies unopened or unwrought within the limits of such road district as aforesaid, shall not be liable to be vacated in less than four years from the time of its location.

Ib.

SEC. 9. That whenever any road shall have been located as aforesaid, and no part thereof shall have been opened and worked as aforesaid, within three years from the time of its location, such road shall be considered vacated; and whenever the entire portion of any such road, situated or lying within any road district, shall remain unopened, unwrought and untravelled, for the term of three years from the time of its location, such petition shall be considered vacated.

Salary of supervisor.

SEC. 10. Every supervisor of roads shall receive, for each day necessarily employed in performance of any of the duties required by this act or the act to which this is an amendment, over and above the number of days' work required by law to be performed by such supervisor, the sum of two dollars, to be paid out of the county treasury, on the order of the board of commissioners, after being sanctioned by them, and after the report of the doings of said supervisors shall have been received, approved and settled by said board of commissioners.

Viewers may fix gates and assess damages.

SEC. 11. The viewers appointed, in accordance with the provisions of the 18th section of the act of which this is an amendment, to view and locate a private road, shall have power to determine, in all cases, whether or not gates shall be placed at proper points on said road; and assess damages in accordance with that determination.

Repeal of enactments.

SEC. 12. All acts and parts of acts conflicting with the provisions of this act, be, and the same are hereby repealed.

SEC. 13. This act shall take effect and be in force from and after its passage.

Act, when to take effect.

*Passed January 31st, 1855.*

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## *AN ACT* TO CONFER THE POWER ON COUNTY COMMISSIONERS TO INCORPORATE COMPANIES IN THEIR RESPECTIVE COUNTIES, FOR THE PURPOSE OF BUILDING BRIDGES

## CHAPTER I.

### POWER OF COUNTY COMMISSIONERS TO INCORPORATE COMPANIES.

SEC. 1. Commissioners may incorporate companies to build bridges.
2. Proceedings of commissioners before granting charter.
3. A bond of applicant to be approved by clerk of commissioners.
4. Commissioners may grant license to build bridges into another county.
5. Space of ground company may occupy; term of incorporation.
6. Liability of company for refusing to give passage.
7. Rates of toll to be posted up at the bridge
8. Act, when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the county commissioners of the several counties within the territory be, and they are hereby empowered and authorized to incorporate companies within their respective counties, for the purpose of erecting or building bridges across streams, and to demand and receive tolls therefor, at rates to be fixed by said county commissioners.

Companies to build bridges, &c.

SEC. 2. When any man or company of men shall apply for a charter under this act, the county commissioners shall appoint three disinterested householders of their county to examine the place or stream proposed to be bridged, and make an estimate of the probable expense of erecting such bridge, and return to the commissioners a statement in writing of such estimated cost, and the plan upon which such estimate is founded, which statement shall be taken into consideration by said county commissioners, in reference to fixing the rates of toll, and the length of time such charter shall run.

Proceedings of commissioners after petition

SEC. 3. Every person or company thus applying for a charter under this act shall, before the same is granted, enter into a bond to the county, with two or more good and sufficient sureties, to be approved by the clerk of the commissioners, in a sum not less than double the estimated cost of said bridge, conditioned that they will, at all times, keep said bridge in good repair, and, at the expiration of their charter, deliver up said bridge in good condition and repair, to the said county commissioners, for free public use; and also that they will, from the time such bridge is erected, until the expiration of such charter, provide some suitable, competent person to give constant and diligent attention at said bridge, from daylight in the morning till nine o'clock in the evening of each day, and also at any hour of the night, if required, such person shall give passage to all persons requiring the same, upon payment of double the rates of toll allowed to be taken in the day time.

Bond of applicants.

CHAP. 1.

Commissioners may erect bridge in another county.

SEC. 4. In case either of two adjoining counties should think it necessary and proper to build a bridge over or across the line dividing the two counties, one end of said bridge resting in each county, the county commissioners of the county desiring so to do, may proceed to incorporate a company for the purpose intended, in the same manner as if the said bridge was to be constructed entirely within the limits of their own county.

Ground company may occupy; term of incorporation.

SEC. 5. No board of county commissioners shall, by any charter or act of incorporation by them granted, confer on any company or person, the right to occupy a greater space than one hundred feet from the centre of their bridge, on either bank of any stream over which they are empowered to erect such bridge, nor shall any such corporators be empowered to enter upon or occupy any lands or hereditaments for the purpose of erecting such bridge as aforesaid, without having first obtained the consent of the owner or owners thereof, and no company shall be incorporated for a longer period of time than ten years.

Liability for refusal to give passage, &c.

SEC. 6. If any such incorporated company, or any keeper or tender by them employed, shall unduly neglect or refuse at any time to give passage to any person or his property across said bridge, such company shall forfeit and pay to the party aggrieved the sum of five dollars for every such offence, to be recovered before any justice of the peace having jurisdiction, and such company shall moreover be liable in an action at law, for any special damage which such person may have sustained in consequence of such neglect or refusal; but no forfeiture or damages shall be recovered for a failure or refusal to give any property or person passage over said bridge, until the toll chargeable by law shall have been fully paid or tendered to the keeper in attendance.

Rates of toll to be posted up.

SEC. 7. Every company incorporated under the provisions of this act, shall post up in some conspicuous place near the entrances to said bridge, a written or printed list of the rates of toll which are chargeable by law at such bridge, which list of rates shall at all times be written or printed in a plain legible manner, and posted up so near the entrances to such bridge, as to be easily read; and if at any time such company shall neglect or refuse to keep such list posted up, it shall not be lawful to charge or take any toll or compensation for crossing such bridge, during the time of such delinquency.

Act, when to take effect.

SEC. 8. This act to be in force from and after its passage.

*Passed January*, 1854.

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## *AN ACT* RELATIVE TO THE SUPPORT OF THE POOR.

SEC. 1. County commissioners to have superintendence of poor.
2. Support of poor by relatives; liability if relatives refuse.
3 Order in which relatives shall support poor persons.
4. Poor, when to be supported from county treasury.
5. Duty of commissioners to bind out minors in certain cases.
6. Person not a pauper falling sick, to be supported in certain cases.
7. Twelve months' residence necessary to entitle pauper to support.
8. Relief on proof of residence; to be removed in case residence is not gained.
9. County commissioners may build work-houses for paupers.
10. Penalty for removing pauper into county.
11. Act, when to take effect.

Board of commissioners.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the boards of county commissioners of the several counties of this territory, are hereby vested with entire and exclusive superintendence of the poor in their respective counties.

Support of relations.

SEC. 2. Every poor person who shall be unable to earn a livelihood in consequence of bodily infirmity, idiocy, lunacy or other cause, shall be supported by the father, mother, children, brothers or sisters of such poor person, if they or either of them be of sufficient ability; and every person who shall fail or refuse to support his or her father, mother, child, sister or brother, when directed by the board of commissioners of the county where such poor person shall be found, whether such relative reside in the county or not, shall forfeit and pay to the county, for the use of the poor of their county, the sum of thirty dollars per month, or such other sum as the commissioners shall find sufficient, to be recovered in the name of the county commissioners for the use of the poor as aforesaid, before any justice of the peace, or any court having jurisdiction: *Provided*, That when any person becomes a pauper from intemperance or other bad conduct, he shall not be entitled to any support from any relation except parent and child.

Proviso.

Ib. Order of obligation.

SEC. 3. The children shall be first called on to support their parents, if there be children of sufficient ability; if there be none, the parents of such poor persons shall be next called on; and if there be no parents or children of sufficient ability, the brothers and sisters shall be next called on; but married females, while their husbands live, shall not be liable to a suit.

Support by county

SEC. 4. When any poor person shall not have any such relatives in any county in this territory as are named in the preceding sections, or such relatives shall not be of sufficient ability, or shall fail or refuse to maintain such pauper, then the said pauper shall receive such relief as the case may require out of the county treasury, and the county commissioners may either make a contract for the necessary maintenance of the poor, or appoint such agents as they may deem necessary to oversee and provide for the same.

Duty of commissioners to bind minors.

SEC. 5. When any minor shall become, or be likely to become chargeable to the county, either because of being an orphan, or because the parents or other relations, as aforesaid, are unable or refuse to support such minor, it shall be the duty of the county commissioners to bind such minor as an apprentice to some respectable householder of the county, by written indenture, which shall bind such minor to serve as an apprentice, and shall, in all respects, be to the tenor and effect as required in the chapter concerning apprentices.

Sick persons not paupers.

SEC. 6. When any non-resident or any other person not coming within the definition of a pauper, shall fall sick in any county of this territory, not having money or property to pay his board, nursing and medical aid, it shall be the duty of the commissioners of the proper county, on complaint being made, to give or order to be given such assistance to such poor person as they may deem just and necessary; and if said sick person shall die, then the said commissioners shall give or order to be given to such person, a

Burial.

decent burial, and the said commissioners shall make such allowance for board, nursing, medical aid, or burial expenses, as they shall deem just and equitable, and order the same to be paid out of the county treasury.

Application of pauper; evidence of residence.

SEC. 7. When application is made by any pauper to the board of county commissioners of any county in this territory, for relief, it shall be necessary for said commissioners to require of said pauper, satisfactory evidence that he has been a resident of said county for twelve months, immediately preceding the day upon which such application was made.

Relief on proof of residence.

SEC. 8. When on application, made by any pauper to the board of commissioners as aforesaid, it shall appear to the satisfaction of said board, that the person so applying for relief has resided in said county agreeably to the provisions of the foregoing section of this chapter, he shall be entitled to all the relief provided by this chapter; but if, on the contrary, it shall appear to the satisfaction of said board that said pauper has not been a resident of said county, agreeably to the provisions of the seventh section of this chapter, they shall proceed to remove from their county, at the expense of said county, such pauper, to the county where such pauper may have his residence.

Building work-houses.

SEC. 9. The board of county commissioners of any county in this territory, may, if they think proper, cause to be built or provided in their respective counties, work-houses for the accommodation and employment of such paupers as may, from time to time, become a county charge; and said work-house and paupers shall be under such rules and regulations as said board of commissioners may deem proper and just.

Penalty for removing pauper into county.

SEC. 10. If any person shall bring and leave any pauper in any county in this territory, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of one hundred dollars for every such offence, to be sued for and recovered by and to the use of such county, in a civil action, before any court having jurisdiction of the same.

Act, when to take effect.

SEC. 11. This act shall take effect and be in force from and after the first day of May next.

*Passed January 23d,* 1854.

# *AN ACT* RELATING TO ESTRAYS AND TO PROPERTY LOST OR UNCLAIMED.

## CHAPTER I.

### PROPERTY LOST OR UNCLAIMED.

TITLE I. *Of Strays.*
TITLE II. *Of Lost Money and Goods.*

## TITLE I.

### *Of Strays.*

SEC. 1. Person taking up boat, raft, &c., when to give notice
2. Who may take up stray animals.
3. Notice, how given if owner unknown.
4. When value of stray is fifteen dollars, appraisal to be made and filed.
5. On what terms owner may have stray returned within one year.
6. If owner and finder cannot agree upon amount of charges, a justice shall settle same: appeal from justice.
7. Estray, when to be sold; notice of sale; excess of proceeds to be applied to schools.
8. Penalty on persons taking stray without consent of finder.
9. Penalty if finder neglect to advertise, or procure appraisal.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That any person taking up any boat, skiff, or other water craft, or raft of lumber or logs, shall, within seven days thereafter, notify the owner thereof, if to him known, and request such owner to pay all reasonable charges.

Notice of taking up boat, &c.

SEC. 2. No person shall take up any stray animal, unless such person shall be at the time a resident of the same county wherein such stray shall be found, or unless such stray be found upon the lands owned or occupied by the finder.

Who may take up stray animals.

SEC. 3. If the owner of any stray be unknown, the finder shall, within thirty days after taking up the same, file a notice thereof with the clerk of the board of county commissioners; and if the stray or strays so taken up are of the value of less than fifteen dollars, he shall also post up notices of the taking up of such stray in two or more public places in such county; but if the stray or strays so taken up, are of the value of more than fifteen dollars, he shall cause such notice to be published in the territorial newspaper, which shall be kept on file in the clerk's office of each county in this territory, describing the same by giving marks, natural and artificial, as near as practicable; the name and residence of the finder; and as near as may be, the time at which the same was taken up.

Notice, how given, if owner unknown.

SEC. 4. Every finder of a stray or strays which, when taken up, are of the value of fifteen dollars or more, shall, within one month after taking up the same, procure an appraisal thereof by a justice of the peace of his county, which appraisal shall be certified to by

Appraisal, when to be made.

such justice, and within the time before mentioned, filed in the office of the clerk of the board of county commissioners; and he shall pay to such justice one dollar for each appraisal and certificate, and ten cents for every mile necessarily travelled in such service.

When owner may claim stray.

SEC. 5. If the owner or person entitled to the possession of any stray, shall appear at any time within one year after the notice is filed with the clerk as aforesaid, and make out his right thereto, he shall have such stray restored to him upon paying all lawful charges which have been incurred in relation to the same.

Ib. His disputes with finder as to charges, how settled.

SEC. 6. If the owner and the finder of any stray cannot agree upon the amount of such charges, or for the use of any such stray, either party may make application to any justice of the peace of the county where such stray was taken up, to settle the same, and the party making such application shall give notice thereof to the other party; and if any amount shall be found due to the finder by the said justice, over the value of the use of such strays, the same shall be a lien on said stray until paid by the owner; and the costs of such adjudication shall abide the decision of the justice: *Provided*, That either party shall have the same right to appeal to the District Court as in other cases.

When stray to be sold.

SEC. 7. If the owner or person entitled to the possession of any stray shall not appear and make out his title thereto, and pay the charges thereon within one year from the time when the notice is filed with the county clerk as provided in the fourth section of this chapter, such stray shall be sold at the request of the finder, by any constable of the precinct, at public auction, upon first giving public notice thereof in writing, by posting up the same in three of the most public places in said precinct, at least ten days before such sale; and the finder may bid therefor at such sale; and after deducting all the lawful charges of the finder as aforesaid, and the fees of the constable, which shall be the same as upon a sale on an execution, the remaining proceeds of such sale shall be deposited in the treasury of the county, for the use of common schools: *Provided*, That if the owner of the property sold or his legal representatives shall, within one year after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the county commissioners of the ownership of such property, he or they shall be entitled to receive the amount so deposited in the county treasury.

Notice of sale.

Excess of proceeds to be applied to schools.

Penalty for secretly taking stray from finder, &c.

SEC. 8. If any person shall, without the consent of the finder, take away any stray taken up pursuant to the provisions of this chapter, knowing the same to have been taken up as a stray, without first paying all the lawful charges incurred in relation to the same, he shall be liable to the finder for the value of such stray.

Penalty if finder neglect to advertise, etc.

SEC. 9. If the finder of any stray shall neglect to cause the same to be advertised, or a notice thereof to be posted up; or if he shall neglect to procure the appraisal of any stray which shall be of the value of fifteen dollars or more, or if he shall neglect to perform any of the duties required of him by this chapter, he shall be precluded from acquiring any right of property in such stray by the provisions of this chapter, or receiving any damages or charges for keeping the same, and shall forfeit and pay into the county treasury a sum equal to the value of the stray, to be sued for and recovered by the county treasurer in the name of the county, for the use of common schools.

## TITLE II.

### *Of Lost Money and Goods.*

SEC. 10. When and how finder of money and goods to give notice.
11 When also notice to be published and appraisal procured; certificate of appraisal.
12. Within what time and on what terms owner may have restitution
13. Finder when to pay one-half to treasurer.
14. Penalty, &c., on finder, for neglect to give notice when value exceeds five dollars.

Notice of finder.

SEC. 10. If any person shall find any money or goods of the value of five dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof, in writing, to the clerk of the board of county commissioners of the county in which such property was found; and, shall also, within said five days, cause a notice thereof to be posted up in two public places in said county.

Ib And appraisal.

SEC. 11. Every finder of lost goods of the value of fifteen dollars or more, shall, in addition to the requirements in the preceding section, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein; and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same who may be entitled thereto, he shall, within two months after finding such goods, and before using the same to their injury, procure an appraisal thereof by a justice of the peace of his county, which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of the county commissioners of such county.

Certificate of justice.

Restitution, when.

SEC. 12. If the owner of such lost money or goods appear within one year after notice given to the clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble.

Finder when to pay one-half to treasurer.

SEC. 13. If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half the value thereof, after deducting all legal charges, to the treasurer of the county; and, in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer in the name of the county.

Penalty for neglect to give notice, &c., where value exceeds $5.

SEC. 14. If any finder of lost money or goods, of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money or goods; one-half to the use of the county, and the other half to the person who shall sue for the same; and shall also be responsible to the owner for such lost money or goods.

# CHAPTER II.

## UNCLAIMED PROPERTY.

SEC. 1. Description of property received by consignees and bailees, to be entered.
2. When and how owner to be notified of reception of property.
3. Property not claimed within one year may be sold.
4. Notice of sale, how given.
5 Proceedings, if owner do not appear and take away property upon notice.
6 Inventory to be made, and justice to order property to be sold.
7. Constable to give notice and sell property at auction.
8. Constable to make return to justice.
9. Justice to pay charges, &c, and balance to treasurer, and deliver statement.
10. Treasurer to enter amount and file statement.
11. Owner may receive amount deposited within five years.
12. If not claimed within five years, to belong to county.
13 When and how perishable property, and in a state of decay, may be sold.
14. Fees of officers under this chapter.
15. Act, when to take effect.

Consignee to enter property in book.

SECTION 1. Whenever any personal property shall be consigned to, or deposited with any forwarding merchant, wharf, warehouse or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise or other personal property, such consignee or bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof.

To notify owner of reception.

SEC. 2. If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him and deposited in the post office, of the reception of such property.

When consignee, &c, may sell

SEC. 3. If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof, may, at any time thereafter, proceed to sell the same in the manner provided in this chapter.

Notice of sale, how given

SEC. 4. Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a note at his residence or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property, shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the territory; the last publication of such notice shall be at least eighteen days previous to the time of sale.

If owner disregard notice.

SEC. 5. If the owner or person entitled to such property shall not take the same away, and pay the charges thereon after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county, an affidavit setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown.

Inventory by justice.

SEC. 6. Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order under his hand, that the property therein described be sold by any constable of the precinct where the same shall be at public auction.

Constable to give notice.

SEC. 7. It shall be the duty of such constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction to the highest bidder, in the same manner as provided by law for sales under execution from justices' courts.

Return of constable.

SEC. 8. Upon completing the sale, the constable making the same shall indorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory and the proceeds of sale, after deducting his fees.

Justice to pay charges, &c., and balance to treasurer, &c.

SEC. 9. From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or ratable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold, and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges and expenses paid to each person.

Treasurer to make entry.

SEC. 10. The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement so delivered to him by the justice.

When owner may claim deposit.

SEC. 11. If the owner of the property sold, or his legal representatives shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him.

If not claimed, when county's.

SEC. 12. If the amount so deposited with any county treasurer, shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and may be disposed of as the board of county commissioners may direct.

Sale of decaying and perishable property

SEC. 13. Property of a perishable kind and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof; the sale to be conducted, and the proceeds of the same to be applied in the manner before provivided in this chapter: *Provided*, That any property in a state of decay or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in section six of this chapter.

Fees.

SEC. 14. The fees allowed to any justice of the peace, under the provisions of this chapter, shall be three dollars for each day's service; and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property.

Act, when to take effect.

SEC. 15. This act shall take effect and be in force from and after the first day of May.

*Passed January 26th*, 1854.

## *AN ACT* RELATING TO STALLIONS.

SEC. 1. When any person may geld stallion running at large.
2. But not if stallion is known to be kept for covering mares.
3. Owner, when liable for damages done by stallion, &c
4. Ridglings included in provisions of last section.
5. Act, when to take effect.

When any one may geld stallions.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That it shall and may be lawful for any person to take up and geld at the risk of the owner, within the months of April, May, June, July, September and October in any year, any stud horse, jackass, or mule of the age of two years and upwards, that may be found running at large out of the enclosed grounds of the owner or keeper, and if the said animal shall die, the owner shall have no recourse against the person or persons who may have taken up and gelded, or cause to be gelded the said animal, if the same has been done by a person in the habit of gelding, and the owner shall pay the price of so gelding.

Exceptions.

SEC. 2. It shall not be lawful for any person or persons to geld any animal, knowing that such animal is kept or intended to be kept for covering mares; and any person so offending shall be liable to the owner for all damages, to be recovered in any court having proper jurisdiction thereof; but if any owner or keeper of the covering animal shall wilfully and negligently suffer said animal to run at large out of the enclosed grounds of said owner or keeper, any person may take the said animal and convey him to his owner or keeper, for which he shall receive two dollars, recoverable before any justice of the peace of the county; for a second offence double the sum, and for a third offence, said animal may be taken up and gelded as is provided in the preceding section of this act.

When owner liable for damage done by stud, &c.

SEC. 3. If a stud horse, mule, or jackass, while running at large out of the enclosed grounds of the owner or keeper, shall damage any other animal by biting or kicking him, or shall do any damage to person or property of any kind whatever, the owner of such stud horse, mule or jackass, shall be liable for all damages done by him.

Ridglings included.

SEC. 4. That horses commonly called ridglings, shall be included under the provisions of the third section of this act.

SEC. 5. That this act be in force and take effect from and after the first day of May next.

*Passed January 10th*, 1854.

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## *AN ACT* RELATING TO COUNTY PRISONS AND THEIR REGULATIONS.

## CHAPTER I.

### COUNTY PRISONS.

TITLE I. *Of Jails and Prisoners.*
TITLE II. *Of the Relief of Persons confined in Jails on Civil Process.*

## TITLE I.

### *Of Jails and Prisoners.*

SEC. 1. County commissioners to erect jails; jails, how to be constructed.
2. Commissioners to receive sealed proposals; notice of letting; bond of contractor
3. Election, when to be held for erection of jails.
4. Jails to be under charge of sheriff, and used as prisons for what.
5. When prisoner may be ordered to adjoining county jail; expenses of, how paid.
6. County commissioners to inspect prisons.
7 & 8. Liquor not to be given to prisoners under penalty.
9. Male and female prisoners to be kept separate.
10. Jails, how to be kept; prisoners, how provided for.
11 Sheriff shall receive prisoners arrested by authority of the United States.
12. United States liable for support of such prisoners
13. Charges, &c., when to be paid by county.
14. Ib. When by territory.
15. Sheriff when to report persons committed for fines or costs to county commissioners; proceedings thereon.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the board of commissioners in each county of this territory are hereby authorized, whenever they may deem proper, to erect in such county a jail or prison for the reception and confinement of prisoners and criminals, to be built of such materials and dimensions, and on such place at the seat of justice of such county, as the commissioners may direct; and there shall be constructed in every such jail, one or more cells or dungeons, for the confinement of criminals sentenced to solitary confinement.

Commissioners to erect county jails.

Dungeons.

SEC. 2. Whenever the commissioners shall determine to erect such jail or prison, they may either receive sealed proposals for the performance of the whole or any part of the work, or for furnishing materials, or may sell the same at public auction to the lowest bidder; but the commissioners, before they enter into any such contract, shall give notice by advertisement, published in some newspaper of general circulation in the county, for at least three weeks in succession, or by putting up advertisements in five public places within the same, three weeks before the time for letting the contract, stating the day on which they will attend at the commis-

Commissioners to receive sealed proposals.

sioners' office in said county, for the purpose of receiving proposals, or selling at public auction, (as the case may be,) and entering into such contract; and the contractor shall enter into bond, payable to the territory of Oregon, for the use of the county, with such securities, and in such sum as the commissioners shall approve, conditioned for the faithful performance of the contract, agreeably to the stipulations thereof.

Bond of contractor.

Election for erection of jails.

SEC. 3. Whenever the commissioners shall determine to erect any jail, the costs of which shall exceed twenty-five hundred dollars, it shall be their duty to make an estimate of the same, and post it upon the door of the court-house in such county, at least twenty-five days before the annual election, and at such election, the qualified electors of such county shall vote for or against the erection of such jail; and if a majority of the votes are given in favor of the same, the county commissioners are hereby authorized to levy a tax, sufficient to cover such estimate; and said additional tax shall be assessed, levied and collected, in the same manner and at the same time that the county tax of such county is assessed, levied and collected.

Jails to be used as prisons.

SEC. 4. The jails now erected, or which shall hereafter be erected in the several counties of this territory, shall be under the charge of the respective sheriffs, and shall be used as prisons:

1. For the detention of persons charged with offences, and duly committed for trial;

2. For the confinement of persons duly committed for any contempt, or upon civil process;

3. For the confinement of persons sentenced to imprisonment therein, upon conviction for any offence.

When prisoner to be delivered to adjoining county jail, etc.

SEC. 5. Whenever there is no jail erected in any county, every judicial or other officer of such county, who shall have power to order, sentence, or deliver any person to the county jail, may order, sentence, or deliver such person to the jail of an adjoining county, or if there be no jail erected in any adjoining county, then in the nearest county jail; and the jailer of any such adjoining or other nearest county, shall receive and keep such prisoner, in the same manner as if he had been ordered, sentenced or delivered to him by any officer or court of his own county; but the county from which he was taken shall pay all the expenses of keeping and maintaining him in said jail.

County commissioners to inspect county prisons.

SEC. 6. The county commissioners of each county shall be inspectors of the prisons therein, and shall visit them at least once in each regular session, and shall examine fully into the condition of such prison, as to health, cleanliness and discipline; and if it shall appear to the said inspectors, that any of the provisions of law have been violated or neglected, they shall forthwith give notice of the same to the district attorney of such district.

Sheriff, etc., not to give liquor to prisoners.

SEC. 7. No sheriff, jailer, or keeper of any prison, shall, under any pretence, give, sell, or suffer to be delivered to any person committed to prison, for any cause whatever, any spirituous, vinous or malt liquors, unless a physician shall certify in writing that the health of such prisoner requires it, in which case he may be allowed to give the quantity prescribed, and no more; and if any sheriff, jailer or keeper as aforesaid, shall give, sell or knowingly suffer to be delivered, any such liquors, contrary to the provisions of this section, he shall forfeit for every offence the sum of twenty-five dollars, to be recovered before a justice of the peace for the use of the county.

Penalty.

Ib. For other persons.

SEC. 8. If any person other than those mentioned in the preceding section, shall sell or give to any person committed for any cause whatever, any liquor prohibited in the last section, or shall have in his possession, in the precincts of any prison, any such liquor, with the intent to convey or deliver the same to any prisoner confined therein, he shall forfeit for every such offence the sum of fifteen dollars, to be recovered and applied as in the last preceding section.

Male and female to be kept separate.

SEC. 9. Male and female prisoners (except husband and wife) shall not be kept or put in the same room.

Jails, etc., to be kept clean.

SEC. 10. The keeper of each jail shall furnish and keep clean the necessary bedding and clothing for all prisoners in his custody, and shall also supply them with wholesome food, fuel and necessary medical aid.

Sheriff, etc., to receive U. S. prisoners.

SEC. 11. Every sheriff, jailer, and prison keeper within the territory, to whom any person shall be sent or committed by virtue of legal process, issued by or under the authority of the United States, shall be required to receive such person into his custody, and to keep him safely until he shall be discharged by due course of the laws of the United States; and every such sheriff, jailer, or prison keeper, offending against the provisions of this section, shall be liable to the same penalties, and the parties aggrieved shall be entitled to the same redress against them or any of them, as if such prisoner had been committed to their custody by virtue of legal process issued under the laws of this territory.

U. S. liable for support, &c.

SEC. 12. The United States shall be liable to pay for the support and keeping of said prisoners, the same charges and allowance as are allowed for the support and keeping of prisoners committed under the laws of the territory.

Charges, etc., when paid by county.

SEC. 13. The charges and expenses for safe keeping and maintaining all persons duly committed to the jail of the county for trial, or sentenced to imprisonment in the county jail, or who may be committed for the non-payment of any fine, or for any contempt, shall, unless otherwise provided by law, be paid out of the treasury of the county, the account of the keeper being first allowed by the board of commissioners of the county from which the prisoner was committed.

Ib. When by territory.

SEC. 14. The charges and expenses of safe keeping and maintaining all persons sentenced to imprisonment in the penitentiary, after such persons shall be delivered to the warden or keeper thereof, as well as the necessary expenses of conveying such persons to the penitentiary, shall be paid out of the territorial treasury.

Person committed for fine, when

SEC. 15. When any convict shall have been confined in any jail for the space of ten days for the non-payment of any fine, and costs

To be reported by sheriff to county commissioners. only, or either of them, the sheriff of the county in which such person shall be imprisoned, shall make report thereof to the commissioners of such county, who may require the keeper of the prison to bring such convict before them, and the commissioners shall proceed to inquire into the circumstances of such convict, and may examine him on oath; and if they shall be satisfied that he has not had, since his conviction, sufficient property to pay such fine and costs, or either of them, they may make a certificate thereof to the sheriff of the county, and direct him to discharge such convict from prison, and the sheriff shall accordingly forthwith discharge him; but such convict shall not thereby be released from the payment of such fine and costs, but the same may be collected by execution at any future time.

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## TITLE II.

### *Of Relief of Persons confined in Jail on Civil Process.*

SEC. 16. Execution debtors, when may be discharged.
17. Notice of application for discharge to be given plaintiff.
18. Notice, how served.
19. Examination of prisoner.
20. Interrogatories by plaintiff to prisoner.
21. Judge, when to administer oath to prisoner; form of oath.
22. Certificate of judge; its form.
23. Jailer to discharge prisoner, on receiving certificate.
24. Prisoner, if not discharged, may apply every succeeding ten days.
25. Prisoner discharged, not liable to re-arrest, unless, &c.
26. Judgment to remain against property of prisoner discharged.
27. Prisoner, when to pay charges before being discharged.
28. Plaintiff may order discharge at any time.
29. Act, when to take effect.

Discharge of execution debtors. SEC. 16. Every person confined in jail on an execution issued on a juugment recovered in an action wherein the defendant is liable to be arrested, may be discharged therefrom, at the end of ten days from his first confinement, upon the conditions hereinafter specified.

Notice of application for discharge to plaintiff. SEC. 17. Such person shall cause notice in writing to be given to the plaintiff in the suit, his agent or attorney, that on a certain day and hour, and at a certain place, he will apply to a judge of the District Court, or two justices of the peace of the county where the person is committed, stating the names of such judge or justices of the peace, for the purpose of obtaining a discharge from his imprisonment.

Notice How served. SEC. 18. Such notice shall be served by copy on the plaintiff, his agent or attorney, twenty-four hours before the hour of hearing the application, in cases where the plaintiff, his agent or attorney, lives within twenty miles of the place of hearing, and twenty-four hours shall be added to the time for every twenty additional miles, the plaintiff, his agent or attorney, shall reside from that place.

Examination on application. SEC. 19. At the time and place specified in such notice, such prisoner shall be taken, under the custody of the sheriff or jailer, before such judge or justices, who shall examine him on oath concerning his estate and effects, and the disposal thereof, and his ability to pay the judgment for which he is committed; and he or they shall also hear any other legal and pertinent evidence that may be produced by the plaintiff or defendant.

Interrogatories by plaintiff.

SEC. 20. The plaintiff in the action may, upon such examination, propose to the prisoner any interrogatories pertinent to the inqury, and they shall, if required by such plaintiff, be answered in writing, and the answers shall be signed and sworn to by the prisoner.

Judge when to administer oath to prisoner.

SEC. 21. If the judge or justices, upon such examination, shall be satisfied that the prisoner has not any real or personal property conveyed, concealed or in any way disposed of, with a design to secure the same to his own use, or to defraud his creditors, he or they shall administer to him the following oath, to wit:

Form of oath

"I, C. D., do solemnly swear that I have not any estate, real or personal, to the amount of twenty dollars, except such as is by law exempt from being taken in execution, and that I have not any other estate now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors—So help me God."

Certificate.

SEC. 22. After administering the oath, the judge or justices shall make a certificate, under his or their hands, as follows:

Its form.

"The undersigned, a judge of the District Court, (or two justices, as the case may be,) hereby certifies that C. D., confined in your jail upon an execution at the suit of A. B., is entitled to be discharged from imprisonment, if he be imprisoned for no other cause."

Prisoner to be discharged.

SEC. 23. The jailer, upon receiving such certificate, shall forthwith discharge the prisoner, if he be detained for no other cause.

Subsequent application for discharge

SEC. 24. If such judge, or two justices, should not discharge the prisoner, he shall be entitled to apply for his discharge at the end of every ten succeeding days, in the same manner as above provided, and the same proceedings shall thereupon be had.

Prisoner not liable to re-arrest, unless, etc.

SEC. 25. The prisoner, after being so discharged, shall be forever exempted from arrest or imprisonment for the same debt, unless he shall be convicted of having wilfully sworn falsely upon his examination before the judge or two justices, or in taking the oath before prescribed.

Judgment to remain against property of prisoner.

SEC. 26. The judgment against any prisoner who is discharged as aforesaid, shall remain in full force against any estate which may then, or at any time afterwards, belong to him, and the plaintiff in the action may take out a new execution against the goods and estate of the defendant, in like manner as if he had never been committed on the execution.

When prisoner to pay charges, etc.

SEC. 27. If the defendant shall undertake to satisfy the execution, he shall not be entitled to his charge, until he has paid all the charges for his support in prison, in addition to the sum due on the execution, and the costs and charges thereon.

Plaintiff may order discharge.

SEC. 28. The plaintiff in the action may at any time order the prisoner to be discharged, and he shall not thereafter be liable to imprisonment for the same cause of action, but the judgment against such prisoner shall remain in full force against any estate which may then or afterwards belong to such discharged defendant.

Act, when to take effect.

SEC. 29. This act shall take effect and be in force from and after the first day of May next.

*Passed January* 25th, 1854.

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*AN ACT* RELATING TO ALIENATION BY DEED, AND THE PROOF AND RECORDING OF CONVEYANCES, AND THE CANCELLING OF MORTGAGES.

# CHAPTER I.

## ALIENATION BY DEED.

TITLE I. *Alienation by Deed, and proof and recording of Conveyances, and the Cancelling of Mortgages.*

TITLE II. *Of the Appointment of Commissioners to take Acknowledgment of Deeds, &c.*

## TITLE I.

### *Alienation by Deed, and proof and recording of Conveyances, and the Cancelling of Mortgages.*

SEC. 1. Conveyances, how made.
2. Conveyance by husband and wife; wife bound by covenant in joint deed.
3. Deed of quit claim, &c., effect of conveyance by.
4. Term "heirs" not necessary to convey fee simple.
5. Conveyance by tenants for life or years.
6 & 7. No covenant to be implied in conveyances or mortgage.
8. Conveyance of lands adversely possessed.
9. Joint conveyances, when construed to create tenancy in common.
10. As to the execution and proof of deeds.
11. Deeds, how executed and acknowledged in other states, &c.
12. Acknowledgment, how authenticated.
13. Deeds executed in foreign country.
14. Acknowledgment by married woman in territory.
15. Proof, &c., of conveyances by married woman residing out of territory.
16. Identity of person acknowledging deed, to be proved.
17. Proofs of deeds by subscribing witness, how to be made.
18. Proof when witnesses are dead, &c., and grantor is dead, or refuses to acknowledge deed.
19. When and how witnesses to deeds may be compelled to testify concerning them.
20. Penalty and proceedings, &c., on refusal to appear or testify.
21. Certificate of proof to be indorsed on deed; its contents.
22. Conveyance, so proved and certified, evidence, and entitled to be recorded.
23. Separate books to be provided for recording deeds and mortgages.
24. Certificate of recorder, on conveyance, recorded; what to state.
25. Recorder to keep index of deeds and mortgages; entries therein.
26. Unrecorded conveyance of real estate, when void as against *bona fide* purchasers.
27. Record and transcript evidence; proof, &c., may be contested.
28. Deed, when not to be defeated by defeasance.
29. Recording assignment of mortgage, not to be notice to mortgagor, &c.
30. When mortgage recorded, may be discharged by entry of satisfaction.
31. When mortgage may be discharged by recorder.
32. Certificate and acknowledgment to be recorded.
33. Liability of mortgagee, &c., for neglect to discharge mortgage, &c.

SEC. 34. Powers of attorney, and contracts for land, when may be recorded; transcript, when evidence.
35 Letters of attorney recorded, not affected by revocation, until it be recorded.
36 Effect of deeds, &c, heretofore acknowledged according to law in force
37. A scroll, &c., attached to deed to have the same effect as a seal.
38. Records, &c., may be transcribed on division of county; fees for transcribing.

Conveyances how made.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That conveyances of lands or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded as directed in this chapter, without any other act or ceremony whatever.

By husband and wife

SEC. 2. A husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed, if she were unmarried; but the wife shall not be bound by any covenant contained in such joint deed.

Quit claim.

SEC. 3. A deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale.

Term "heirs," not necessary.

SEC. 4. The term "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and any conveyance of any real estate hereafter executed, shall pass all the estate of the grantor, unless the intent to pass a less estate shall appear by express terms, or be necessarily implied in the terms of the grant.

Conveyances by tenant for life and years.

SEC. 5. A conveyance made by a tenant for life or years, purporting to grant a greater estate than he possessed or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey.

Covenants not implied in conveyance.

SEC. 6. No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not.

Ib. Or in mortgage.

SEC. 7. No mortgage shall be construed as implying a covenant for the payment of the sum thereby intended to be secured; and when there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage.

Of lands held adversely.

SEC. 8. No grant or conveyance of lands, or interest therein, shall be void for the reason that, at the time of the execution thereof, such land shall be in the actual possession of another claiming adversely.

Joint conveyances.

SEC. 9. Every conveyance or devise of lands, or interest therein, made to two or more persons, other than to executors and trustees, as such, shall be construed to create a tenancy in common in such estate, unless it be expressly declared in such conveyance or devise, that the grantees or devisees shall take the lands as joint tenants.

SEC. 10. Deeds, executed within this territory, of lands or any

TITLE 1. Execution and proof of deeds. interest in lands therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such; and the persons executing such deeds may acknowledge the execution thereof before any judge of the District Court, probate judge, justice of the peace or notary public within the territory; and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand.

Ib. In other states. SEC. 11. If any deed shall be executed in any other state, territory or district of the United States, such deed may be executed according to the laws of such state, territory or district, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace, or notary public, or other officer authorized by the laws of such state, territory or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of this territory for such purpose.

Ib. SEC. 12. In the cases provided for in the last section, unless the acknowledgment be taken before a commissioner appointed by the governor of this territory for that purpose, such deed shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment, was, at the date thereof, such officer as he is therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine; and that the deed is executed and acknowledged according to the laws of such state, territory or district.

Ib In foreign countries. SEC. 13. If such deed be executed in any foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, *charge des affaires*, commissioner, or consul of the United States, appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate.

Acknowledgment by married woman in this territory. 16 J. R. 110; 20 J. R 301; 8 Paige, 121; 10 do 345 SEC. 14. When a married woman, residing in this territory, shall join with her husband in a deed of conveyance of real estate situated within this territory, the acknowledgment of the wife shall be taken separately and apart from her husband, and she shall acknowledge that she executed such deed freely, and without fear or compulsion from any one.

Ib. If residing out of territory. SEC. 15. When any married woman not residing in this territory shall join with her husband in any conveyance of real estate situated within this territory, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole.

Requisites for acknowledgments. SEC. 16. No acknowledgment of any conveyance having been executed shall be taken by any officer, unless he shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in, and who executed such conveyance.

1 J. R. 488; 6 do 149; 11 do 434; 2 Cow. 552.(a)

Proof by subscribing witness. 2 Wen 555; 7 do 366.

SEC. 17. Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgments of deeds, and shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in, and who executed such conveyance; any such proof shall not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument.

Proof when witnesses and grantor are absent, etc.

SEC. 18. When any grantor is dead, out of this territory, or refuses to acknowledge his deed, and all the subscribing witnesses to such deed shall also be dead or reside out of this territory, the same may be proved before the District Court, or any judge thereof, by proving the handwriting of the grantor, and of any subscribing witness thereto.

When witnesses to deeds compelled to testify concerning them.

SEC. 19. Upon the application of any grantee, or any person claiming under him, verified by the oath of the applicant, setting forth that the grantor is dead, out of the territory, or refused to acknowledge his deed, and that any witness to such conveyance, residing in the county where the application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proven without his evidence, any officer authorized to take the acknowledgment or proof of conveyances, except a commissioner of deeds, may issue a subpœna, requiring such witness to appear and testify before such officer touching the execution of such conveyance.

Penalty for refusing to appear or testify.

SEC. 20. Every person duly served with such subpœna, who shall, without reasonable cause, refuse or neglect to appear, or, appearing, shall refuse to answer, upon oath, touching the matter aforesaid, shall forfeit to the injured party one hundred dollars, and may also be committed to prison, as for a contempt, by the officer who issued such subpœna, there to remain until he shall submit to answer on oath as aforesaid.

Certificate of proof to be indorsed on deed.

SEC. 21. Every officer who shall take the proof of any conveyance, shall indorse a certificate thereof, signed by himself, on the conveyance; and in such certificate shall set forth the matters hereinbefore required to be done, known or proved, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given.

Effect of proof.

SEC. 22. Every conveyance, acknowledged, or proved or certified in the manner hereinbefore prescribed, by any of the officers before named, may be read in evidence without further proof thereof, and shall be entitled to be recorded in the county in which the lands lie.

Separate books for deeds and mortgages.

SEC. 23. Separate books shall be provided by the recorder of deeds in each county, for the recording of deeds and mortgages; in one of which books all deeds left with such recorder shall be recorded at full length, with the certificates of acknowledgment, or proof of the execution thereof; and in the other, all mortgages left with the recorder shall in like manner be recorded.

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(a) 4 Wen. 563; 13 do 589.

Certificate of recorder on conveyances recorded.

SEC. 24. The recorder of deeds shall certify, upon every conveyance recorded by him, the time when it was received, and a reference to the book and page where it is recorded; and every conveyance shall be considered as recorded at the time it was so received.

Index of deeds and mortgages.

SEC. 25. The recorder shall also keep a proper index, direct and inverted, to the books for the recording of deeds, and also one to the books for the recording of mortgages, in which he shall enter alphabetically the name of every party to each and every instrument recorded by him, with a reference to the book and page where the same is recorded.

Unrecorded conveyances when void.

SEC. 26. Every conveyance of real property within this territory hereafter made, which shall not be recorded, as provided in this chapter, within thirty days thereafter, shall be void against any subsequent purchaser in good faith, and for a valuable consideration, of the same real property, or any portion thereof, whose conveyance shall be first duly recorded.

Record, etc., evidence.

SEC. 27. The record of a conveyance duly recorded, or a transcript thereof, duly certified by the recorder in whose office the same may have been recorded, may be read in evidence in any court in this territory, with the like force and effect as the original conveyance; but the effect of such evidence may be rebutted by other competent testimony.

When deed not defeated by defeasance.

SEC. 28. When a deed purports to be an absolute conveyance in terms, but is made or intended to be made defeasible by force of a deed of defeasance, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the office for the recording of deeds and mortgages of the county where the lands lie.

Recording assignment of mortgage.

SEC. 29. The recording of the assignment of a mortgage shall not in itself be deemed notice of such assignment to the mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either, to the mortgagee.

How mortgage may be discharged.

SEC. 30. Any mortgage that has been or may hereafter be recorded, may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder of deeds, or his deputy, who shall subscribe the same as a witness; and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Ib.

SEC. 31. Any mortgage shall also be discharged upon the record thereof, by the recorder in whose custody it shall be, whenever there shall be presented to him a certificate, executed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied or discharged.

Certificate and acknowledgment to be recorded.

SEC. 32. Every such certificate and the proof or acknowledgment thereof, shall be recorded at full length, and a reference shall be made to the book and page containing such record, in the minute of the discharge of such mortgage, made by the recorder upon the record thereof.

Liability of mortgagee, etc, for neglect to discharge mortgage.

SEC. 33. If any mortgagee, or his personal representative or assignee, as the case may be, after full performance of the condition of the mortgage, whether before or after a breach thereof, shall, for the space of ten days after being thereto requested, and after tender of his reasonable charges, refuse or neglect to discharge the same as provided in this chapter, or to execute and acknowledge a certificate of discharge or release thereof, he shall be liable to the mortgagor, his heirs or assigns, in the sum of one hundred dollars damages, and also for all actual damages occasioned by such neglect or refusal, to be recovered in an action at law.

Powers of attorney and contracts for land may be proved and recorded.

SEC. 34. Every letter of attorney, or other instrument, containing a power to convey lands, as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, when acknowledged or proved, in the manner prescribed in this chapter for the acknowledgment or proof of conveyances, may be recorded in the recorder's office of any county in which the lands to which such power or contract relates, may be situated; and when so acknowledged or proved, and the record thereof when recorded, or a transcript of such record duly certified, may be read in evidence in any court in this territory, without further proof of the same.

10 Paige, 345

Letters recorded, how revoked.

SEC. 35. No letter of attorney, or other instrument so recorded, shall be deemed to be revoked by any act of the party by whom it was executed, unless the instrument containing such revocation be also recorded in the same office in which the instrument containing the power was recorded.

Effect of deeds, etc., heretofore acknowledgd

SEC. 36. All conveyances of real property heretofore made and acknowledged, or proved in accordance with the laws of this territory in force at the time of such making and acknowledgment of proof, shall have the same force as evidence, and be recorded in the same manner, and with the like effect as conveyances executed and acknowledged in pursuance of the provisions of this chapter.

Scroll used as seal.

SEC. 37. A scroll or device used as a seal upon any deed of conveyance, or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon; but this section shall not be construed to apply to such official seals as are or may be provided for by law.

Transcribing records on division of county.

SEC. 38. When a new county shall be organized in whole or in part from an organized county, or from territory attached to such organized county for judicial purposes, all the records of deeds or other instruments relating to real property in such new county, may be transcribed into the proper books by the recorder of deeds of such new county; which records, so transcribed, shall have the same effect in all respects as original records, and the recorder shall be paid, for transcribing the same, such sum as the board of county commissioners in his county may deem just and reasonable.

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## TITLE II.

### *Of the Appointment of Commissioners to take Acknowledgments of Deeds, &c.*

SEC. 39. Power of governor to appoint commissioners in other states to take proof and acknowledgment of deeds.
40. Effect of acknowledgment before such commissioner.
41. Commissioner, before acting, to take oath.
42. Act, when to take effect.

Appointm'nt of commissioners. SEC. 39. The governor of this territory shall have power to appoint one or more commissioners in any state of the United States, or of the territories belonging to the United States, who shall continue in office during the pleasure of the governor, and shall have authority to take the acknowledgment and proof of the execution of any deed, or other conveyance of lands lying in this territory, or of any letter of attorney, or contract for the sale of such lands.

Acknowledgment before. SEC. 40. Such acknowledgment or proof so taken, according to the laws of this territory, and certified to by any such commissioner, under his seal of office, annexed to or indorsed on such instrument, shall have the same power and effect as if the same had been made before any officer authorized to perform such acts in this territory.

Oath of. SEC. 41. Every such commissioner, before performing any duty, or exercising any power by virtue of his appointment, shall take and subscribe an oath or affirmation before a judge or clerk of one of the courts of record of the state or territory in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commission, under and by virtue of the laws of Oregon; which oath, with a description and impression of his seal of office, shall be filed in the office of the secretary of this territory.

Act, when to take effect. SEC. 42. This act shall take effect and be in force from and after the first day of May next.

*Passed January 13th, 1854.*

## *AN ACT* RELATING TO FRAUDULENT CONVEYANCES.

# CHAPTER I.

## FRAUDULENT CONVEYANCES.

TITLE I. *Of Fraudulent Conveyances.*
TITLE II. *Of Fraudulent Conveyances and Contracts, relative to Goods and Chattels.*
TITLE III. *General Provisions.*

## TITLE I.

### *Of Fraudulent Conveyances.*

SEC. 1. Conveyances of land, &c, with intent to defraud purchaser, void as to them.
2. Qualification of preceding section, as to subsequent purchasers.
3. Conveyances containing power of revocation, void as to subsequent purchasers.
4. Certain conveyance by person authorized to revoke former conveyance, valid.
5. Such conveyance valid from the time power to revoke vested.
6. Writing, &c, necessary to convey certain interest in land.
7. Last section not to extend to wills or certain trusts.
8. Contracts to sell or lease land, to be in writing.
9. Consideration need not be specified, but may be proved by other legal evidence
10. Power of court to compel performance of agreement not to be affected.

Fraudulent conveyances void, etc. 4 Comst. 211.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That every conveyance or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made or created with the intent to defraud prior or subsequent purchasers, for a valuable consideration, of the same lands, rents or profits, as against such purchasers, shall be void.

Qualification of last section

SEC. 2. No such conveyance or charge shall be deemed fraudulent in favor of a subsequent purchaser, who shall have actual or legal notice thereof at the time of his purchase, unless it shall appear that the grantee in such conveyance, or person to be benefited by such charge, was privy to the fraud intended.

Conveyances with powers of revocation, void, &c.

SEC. 3. Every conveyance or charge of or upon any estate or interest in lands, containing any provision for the revocation, determination or alteration of such estate or interest, or any part thereof, at the will of the grantor, shall be void as against subsequent purchasers from such grantor for a valuable consideration, of any estate or interest, so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by such grantor, by virtue of the power reserved or expressed in such prior conveyance or charge.

Conveyances by one authorized to revoke former grants.

SEC. 4. Where a power to revoke the conveyance of any lands, or the rents and profits thereof, and to reconvey the same, shall be given to any person other than the grantor in such conveyance, and such person shall thereafter convey the same lands, rents or profits, to a purchaser, for a valuable consideration, such subsequent conveyance shall be valid, in the same manner and to the same ex-

TITLE 2.

tent, as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared.

Conveyances by one authorized to revoke former grants.

SEC. 5. If a conveyance to a purchaser, under either of the last two preceding sections, shall be made before the person making the same shall be entitled to execute his power of revocation, it shall, nevertheless, be valid from the time the power of revocation shall actually vest in such person, in the same manner, and to the same extent, as if then made.

Requisites to convey certain interest in lands. 6 Wen. 461; 10 do. 436, 18 do. 484; 16 do. 26, 80 (*a*)

SEC. 6. No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by an act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, authorized by writing.

Qualification of last section.

SEC. 7. The preceding section shall not be construed to affect in any manner, the power of a testator, in the disposition of his real estate, by a last will and testament; nor to prevent any trust from arising, or being extinguished by implication, or operation of law.

Contract to lease or sell lands. 16 Wen. 460; 21 do. 467; 7 Hill, 58, 10 Paige, 391, 526.(*b*)

SEC. 8. Every contract, for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof be in writing, and signed by the party by whom the lease or sale is to be made, or by some other person, by him lawfully authorized in writing.

Consideration need not be specified.

SEC. 9. The consideration of any contract or agreement, required by the provisions of this chapter to be in writing, need not be set forth in the contract or agreement, or in the note or memorandum thereof, but may be proved by any other legal evidence.

Powers of Courts of Chancery. 6 Barb 93; 2 Barb Ch. 555; 8 do. 407, 416.

SEC. 10. Nothing hereinbefore contained in this chapter, shall be construed to abridge the powers of courts of chancery, to compel the specific performance of agreements, in cases of part performance of such agreements.

## TITLE II.

### *Of Fraudulent Conveyances and Contracts, relative to Goods and Chattels.*

SEC. 11. Transfers of personal property for use of grantor, void as to creditors.
12. Certain agreements to be in writing, and subscribed by party charged.
13. Requisites for the validity of contracts for sale of personal property.
14. What to be a memorandum, within last section, of sales at auction
15. Certain transfers of goods, &c., fraudulent as to creditors unless delivered, &c.
16. Who to be deemed creditors within last section.
17. Qualification of two last sections
18. Mortgages of chattels void, unless filed, &c.
19. Last section not to apply to bottomry, &c., contracts, or to asssignments, &c., of ships and goods at sea.

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(*a*) 2 Hill, 486; 4 Denio, 51; 7 Barb. 59, 191; 11 Paige, 406; 2 Barb Ch. 230; 4 Comst. 404.
(*b*) 11 Paige, 481; 2 Barb. 618; 5 do. 364; 7 do 191; 8 do. 182.

SEC. 20. Recorder to indorse time of receiving instrument, and deposit of same in office.
21. Recorder to enter names of parties, and note therein time of filing.
22. Lien ceases after one year, unless refiled.
23. Affidavit of mortgagee's interest to be renewed.
24. Evidence of filing.
25. Fees of recorders.

SEC. 11. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods and chattels, or things in action, made in trust for the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

Certain transfers of, void 6 Hill, 434, 439.

SEC. 12. In the following cases specified in this section, every agreement, contract and promise, shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person by him lawfully authorized; that is to say:

1. Every agreement that, by its terms, is not to be performed in one year from the making thereof;

2. Every special promise to answer for the debt, default, or miscarriage of another person;

3. Every agreement, promise, or undertaking, made upon consideration of marriage, except mutual promises to marry;

4. Every special promise made by an executor or administrator, to answer damages out of his own estate.

Certain agreements to be in writing, etc. 10 Wen 426; 13 do 307, 311; 10 Wen 426; 13 do 307; 3 Hill, 123 (a) 4 Wen. 657; 9 do. 273; 15 do 345.(b) 10 Wen. 461; 3 Barb. 323.

SEC. 13. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void unless:

1. A note or memorandum of such contract be made in writing, and signed by the party to be charged thereby, or by some person by him lawfully authorized; or,

2. Unless the purchaser shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or,

3. Unless the purchaser shall, at the time, pay some part of the purchase money.

Contracts when to be in writing. 13 Wen 112; 3 do 53, 17 do. 335.(c)

SEC. 14. Whenever goods shall be sold at public auction, and the auctioneer shall, at the time of sale, enter in a sale book a memorandum, specifying the nature and price of the property sold, the terms of sale, the name of the purchaser, and the name of the person on whose account the sale is made; such memorandum shall be deemed a note of the contract of sale, within the meaning of the last section.

Sales at auction.

SEC. 15. Every sale made by a vendor of goods and chattels in his possession, or under his control, unless the same be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things sold, shall be presumed to be fraudulent and void, as against the creditors of the vendor, or subsequent purchasers in good faith; and shall be conclusive

Delivery and possession necessary to certain transfers of goods. 3 Wen 378; 12 do. 297; 15 do 213; 629; 16 do. 523;

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(a) 2 Denio, 87; 2 Barb Ch. 221.

(b) 19 Wen. 563; 24 do. 40, 257; 2 Hill, 664; 3 do 585; 4 do. 179; 5 do. 146, 161, 484; 2 Denio, 47; 162, 368; 4 do. 275, 559; 3 Barb 209; 4 do. 181; 5 do. 501; 2 do 225, 534, 3 do 209, 385.

(c) 20 Wen. 483; 23 do 471; 26 do. 347; 5 Hill, 205, 1 Denio, 48; 1 Comst. 261, 295, 297, 90; 4 do. 585.

17 do. 53, 494; 19 do. 183, 515, 523, 20 do. 17.(a)

evidence of fraud, unless it shall be made to appear to the jury, on the part of the person claiming under such sale, that the same was made in good faith, and without any intent to defraud creditors, or subsequent purchasers.

Who to be deemed creditors.

SEC. 16. The term "creditors," as used in the last section, shall be construed to include all persons who shall be creditors of the vendor, at any time whilst such goods and chattels shall remain in his possession, or under his control.

Last two sections qualified.

SEC. 17. Nothing contained in the last two sections shall avoid or defeat any sale or transfer of any ship, boat, vessel, or goods at sea or abroad, if the purchaser shall take possession of such ship, boat, vessel or goods, as soon as may be after the arrival thereof.

Mortgages void unless filed. 17 Wen. 494; 19 do. 515, 523; 23 do. 629; 1 Comst. 496.

SEC. 18. Every mortgage or conveyance, intended to operate as a mortgage of goods and chattels, which shall hereafter be made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers, and mortgagors in good faith, unless the mortgage, or a true copy thereof, shall be filed in the office of the recorder of deeds in the county where the mortgagor resides.

Ib. Exceptions to bottomry bonds; assignments of ships and goods at sea.

SEC. 19. Nothing contained in the last section shall be construed to apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods at sea or in foreign ports.

Recorder when to deposit instrument.

SEC. 20. It shall be the duty of the recorder, upon the presentation of any such instrument or copy for that purpose, and the payment of his fees, to indorse thereon the time of receiving the same, and to deposit such instrument or copy in his office, to be kept for the inspection of all persons interested.

Ib., to enter names of parties, etc.

SEC. 21. Such recorder shall also enter, in a book to be provided by him for that purpose, the names of all the parties to such instruments, arranging the names of all the mortgagors alphabetically, and shall note therein the time of filing each instrument or copy.

Every year. 20 Wen. 17; 1 Denio, 168; 8 Barb. 102.

SEC. 22. Every such mortgage shall cease to be valid as against the creditors of the person making the same, or subsequent purchasers or mortgagors in good faith, after the expiration of one year from the filing of the same, or a copy thereof, unless within thirty days next preceding the expiration of the year, the mortgagee, his agent or attorney, shall make and annex to the instrument or copy on file, as aforesaid, an affidavit setting forth the interest which the mortgagee has by virtue of such mortgage in the property therein mentioned, upon which affidavit the recorder shall indorse the time when the same was filed.

Affidavit renewed yearly.

SEC. 23. The effect of any such affidavit shall not continue beyond one year from the time when such mortgage would otherwise cease to be valid as against the creditors of the person making such mortgage, or subsequent purchasers or mortgagees in good faith; but within thirty days next preceding the time when any such mortgage would otherwise cease to be valid as aforesaid, a similar affidavit may be filed and annexed, as provided in the preceding section, and with like effect.

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(a) 23 Wen. 655; 24 do. 121; 25 do. 393; 26 do. 515; 1 Hill, 349, 440, 463; 4 do. 274; 8 Barb. 103; 1 Comst. 496; 4 do. 586.

Copy to be received in evidence.

SEC. 24. A copy of any such instrument, or of any copy thereof, so filed as aforesaid, including any affidavits annexed thereto, in pursuance of this chapter, certified by the recorder in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument, copy, or affidavit, was received and filed, according to the indorsement of the recorder thereon, and of no other fact.

Fees.

SEC. 25. The recorder shall be entitled to receive the following fees, for services under the provisions of this chapter: for filing each mortgage of goods and chattels, or a copy thereof, or affidavit, twenty-five cents; for entering the same in a book, twenty-five cents; for searching, for each paper, fifteen cents; and the like fees for certified copies of such instruments or affidavits, as are allowed by law for copies of records, kept by the recorder of deeds.

## TITLE III.

### *Of General Provisions.*

SEC 26. Instruments relating to real or personal property, made to defraud, void.
27. Grants and assignments of trusts to be in writing.
28. Instruments void as to creditors, to be void as to their representatives.
29. Fraudulent intent, a question of fact.
30. Certain purchases not to be affected by fraud without notice thereof.
31. Meaning of terms "lands" and "estate in interest in lands."
32. Meaning of term "conveyance."
33. Act, when to take effect.

Conveyances, charges, etc., made with intent to hinder or delay creditors, void.(a)

SEC. 26. Every conveyance or assignment, in writing or otherwise, of any estate or interest in lands, or in goods, or things in action, or of any rents or profits issuing therefrom, and every charge upon lands, goods, or things in action, or upon the rents or profits thereof, made with the intent to hinder, delay, or defraud creditors, or other persons of their lawful suits, damages, forfeitures, debts, or demands, and every bond or other evidence of debt given, suit commenced, decree or judgment suffered with the like intent, as against the persons so hindered, delayed, or defrauded, shall be void.

Grants of trusts to be in writing.

SEC. 27. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing, subscribed by the party making the same, or by his agent, lawfully authorized, shall be void.

Void as to whom.

SEC. 28. Every conveyance, charge, instrument or proceeding, declared by law to be void as against creditors, purchasers or mortgagees, shall be equally void as against the heirs, successors, personal representatives or assigns of such creditors, purchasers or mortgagees.

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(a) 1 Denio, 195; 4 do 174, 217, 287; 4 Barb. 282, 332, 546, 6 do 91, 470

Fraudulent intent, question of fact. (a)

SEC. 29. The question of fraudulent intent, in all cases arising under the provisions of this chapter, shall be deemed a question of fact, and not of law.

Construction of act as to purchasers.

SEC. 30. The provisions of this chapter shall not be construed in any manner to affect or impair the title of a purchaser, for a valuable consideration, unless it shall appear that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Ib. Term "lands."

SEC. 31. The terms "lands," as used in this chapter, shall be construed as co-extensive in meaning, with "lands, tenements and hereditaments," and the terms "estate and interest in lands," shall be construed to embrace every interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands as above defined.

Ib. "Conveyance."

SEC. 32. The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

Act, when to take effect.

SEC. 33. This act shall take effect and be in force from and after the first day of May next.

*Passed January 16th*, 1854.

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## *AN ACT* RELATING TO BILLS OF EXCHANGE AND PROMISSORY NOTES.

## CHAPTER I.

### BILLS OF EXCHANGE AND PROMISSORY NOTES.

SEC. 1. Effect of promissory note payable to order or bearer.
2. Same effect given to note signed by an agent.
3. When actions by payees, indorsees and holders to be maintained.
4. Effects of notes made payable to order of maker or fictitious person.
5 Days of grace, when allowed.
6. Last section limited.
7. Acceptance to be in writing.
8. Damages on foreign bills of exchange.
9. Damages on inland bills of exchange.
10. Act, when to take effect.

Promissory notes payable to order or bearer negotiable.

Their effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That all notes in writing made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner as inland bills of exchange, according to the custom of merchants.

Signature by agent.

SEC. 2. Every note signed by the agent of any person, under a general or special authority, shall bind such person, and have the same effect, and be negotiable as provided in the preceding section.

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(a) 11 Wen. 251; 23 do. 654; 8 Paige, 558; 4 Denio, 174.

Actions by payees, indorsees and holders.

SEC. 3. The payees and indorsees of every such note payable to them or their orders, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, in like manner as in cases of inland bills of exchange, and not otherwise.

Effect when payable to order of maker. 3 Hill, 115

SEC. 4. Such notes made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity as against the maker, and all persons having knowledge of the facts, as if payable to bearer.

Days of grace, when allowed.

SEC. 5. On all bills of exchange payable at sight, or at a future day certain within this territory; and on all negotiable promissory notes, orders and drafts payable at a future day certain, within this territory, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed by the custom of merchants on foreign bills of exchange, payable at the expiration of a certain period after date, or at sight.

Last section limited.

SEC. 6. The provision of the last preceding section shall not extend to any bill of exchange, note or draft payable on demand.

Acceptance to be in writing 1 Hill, 584; 2 do 583; 5 do. 417.

SEC. 7. No person within this territory shall be charged as an acceptor of a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

Damages on foreign bills of exchange.

SEC. 8. Whenever any bill of exchange, drawn or indorsed within this territory, and payable without the limits of the United States, shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill, shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand, and damages at the rate of ten per cent. upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

Damages on inland bills of exchange.

SEC. 9. If any bill of exchange, drawn upon any person, or body politic of or corporate out of this territory, but within some state or territory of the United States, for the payment of money, shall be duly presented for acceptance or payment, and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance, or non-payment, shall pay said bill with legal interest, according to its tenor, and five per cent. damages, together with costs and charges of protest.

Act, when to take effect.

SEC. 10. This act shall take effect and be in force from and after the first day of May next.

*Passed January 18th*, 1854.

CHAP. 1.

## *AN ACT* TO REGULATE THE INTEREST OF MONEY.

SEC. 1. Ten per cent., when allowed.
2. Interest allowed from rendition of judgment, &c.; rate of interest same as specified in contract.
3. When interest may be added to principal.
4. Preceding section limited.
5. Act, when to take effect.

When ten per cent. to be charged.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That creditors shall be allowed to receive interest at the rate of ten per cent. per annum, when no other rate of interest is agreed upon, for all moneys after they become due, by any instrument of the debtor, in writing; for money lent or money due on settlement of accounts, from the day of liquidating the same, and ascertaining the balance; for money recovered for the use of another and retained without the owner's knowledge of the receipt; for money due and withheld by an unreasonable and vexatious delay of payment or settlement of accounts, and for all other moneys due, or to become due, for the forbearance of payment whereof no express promise to pay interest has been made.

Interest on judgments and decrees.

SEC. 2. Interest shall be allowed on all money due by judgment at law or decree in equity, from the day of rendering them until satisfaction be made by payment, accord or sale of property; judgments and decrees for money upon contracts bearing more than ten per cent. interest, shall bear the same interest borne by such contract; and all other judgments and decrees for money shall bear ten per cent. per annum, until satisfaction made as aforesaid.

When interest may be added to principal.

SEC. 3. The parties may, in any contract in writing, whereby any debt is secured to be paid, agree that if the interest on such debt be not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

SEC. 4. The preceding section shall not be so construed as to allow any creditor, by agreement, to compound the interest due him on any contract oftener than once in a year.

Act, when to take effect.

SEC. 5. This act shall take effect and be in force from and after the first day of May next.

*Passed January 26th,* 1854.

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## *AN ACT* RELATING TO MARKS AND BRANDS AND TO WEIGHTS AND MEASURES.

## CHAPTER I.

### OF MARKS AND BRANDS.

SEC. 1. Register of deeds to record marks and brands.
2. When persons not to use same brands; who to have preference.

Register to record marks and brands.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That it shall be the duty of the recorder of deeds of each county, on the application of any person residing in such county, to record a description of the marks and brands with which said person may be desirous of marking his horses, cattle, sheep or hogs; but the same description shall not be recorded for more than one resident of the same county.

When persons not to use same brand.

SEC. 2. No two persons, residing within fifteen miles of each other, shall use the same mark or brand in this territory; but, in such cases, the person having the oldest recorded mark shall have the preference, but nothing contained (herein) shall prevent the parties from agreeing which of them shall change his mark or brand; and any person offending against the provisions of this section shall, on conviction before a justice of the peace of the proper county, be fined for each offence, in any sum not exceeding five dollars.

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## CHAPTER II.

### OF WEIGHTS AND MEASURES.

SEC. 1. What to be the standard of weights and measures.
2. Treasurer of territory shall be sealer.
3. One hundred pounds avoirdupois to be the hundred weight implied in contracts.
4. Standard weight of commodities sold by the bushel.
5 Half bushel to be the standard for certain articles.
6. Act, when to take effect.

Standard of weights and measures.

SECTION 1. The weights and measures, together with the scales and beams, and those made in conformity therewith, which are now or may hereafter be deposited in the treasury of this territory, shall be preserved by the treasurer, and be the public standards in this territory.

Treasurer shall be sealer.

SEC. 2. The treasurer of the territory shall be the sealer of weights and measures, and he shall have and keep a seal, which shall be so formed as to impress the letters O. T. upon the weights and measures, scales and beams to be sealed by him; with which he shall seal all such authorized public standards of weights and measures, and all the weights and measures, scales and beams, to be provided by the several counties, when examined by said treasurer and found to be in conformity with the standard weights and measures, scales and beams aforesaid.

Measuring of hundred weight.

SEC. 3. When any commodity shall be sold by the hundred weight, it shall be understood to mean the net weight of one hundred pounds avoirdupois, and all contracts concerning goods or commodities sold by weight, shall be construed accordingly, unless such construction would be manifestly inconsistent with the special agreement of the parties contracting.

Standard weight of commodities sold by the bushel.

SEC. 4. Whenever wheat, rye, Indian corn, oats, barley, clover seed, buckwheat, dried apples or dried peaches, shall be sold by the bushel, and no special agreement as to the measure or weight thereof shall be made by the parties, the measure thereof shall be ascertained by weight, and shall be computed as follows:

Sixty pounds for a bushel of wheat or clover seed;
Fifty-six pounds for a bushel of rye or Indian corn;

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Thirty-four pounds for a bushel of oats;

Forty-six pounds for a bushel of barley;

Forty-two pounds for a bushel of buckwheat;

Twenty-eight pounds for a bushel of dried apples or dried peaches, and sixty pounds for a bushel of potatoes.

Half bushel to be standard for certain articles.

SEC. 5. The half bushel and the parts thereof shall be the standard measure for charcoal, fruits and other commodities, customarily sold by heaped measure, and in measuring such commodities, the half bushel, or other smaller measure, shall be heaped as high as may be, without special effort or design.

Act, when to take effect.

SEC. 6. This act shall take effect and be in force from and after the first day of May next.

*Passed January 12th, 1854.*

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## *AN ACT* RELATING TO SEALS.

SEC. 1. Description of seal of territory; where to be deposited; who to have custody of seal.
2. Commissioners to provide seal for district and probate court.
3. When court is without seal, how to proceed.
4. Device may be used as seal.
5. Act, when to take effect.

Description of great seal where to be deposited.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the description in writing of the great seal of the territory, shall be deposited and recorded in the office of the secretary of the territory, and shall remain a public record, and shall be and continue the description of the great seal of the territory; and the person administering the government of the territory, shall have the custody of the said seal; and all such matters and things as issue under the said seal, shall be entered on record in the office of the secretary of the territory.

Who to have custody of seal.

County commissioners to furnish seals for District and Probate Court.

SEC. 2. It shall be, and hereby is made the duty of the board of county commissioners of the several counties of the territory, to provide and furnish seals for such of the several district and probate courts, and board of county commissioners, as are now unprovided with the same, and with such inscriptions and devices as the said courts shall respectively require.

If court be unprovided with seal.

SEC. 3. When any court of record shall be unprovided with a seal, the judge of said court may authorize the use of any temporary seal, or of any device by way of seal, until the same shall be provided as aforesaid.

Device equivalent to seal.

SEC. 4. Any instrument to which the person making the same shall affix any device by way of seal, shall be adjudged and held to be of the same force and obligation as if it were actually sealed.

Act, when to take effect.

SEC. 5. That this act shall take effect and be in force from and after the first day of May next.

*Passed January 18th, 1854.*

## *AN ACT* REGULATING ENCLOSURES.

SEC. 1. Fields how to be enclosed.
2. Enclosure how to be made.
3. Sufficiency of worm fence, how determined.
4. Liability of owner if cattle break into legal enclosure.
5. Justice when to order view of fence
6. Penalty for injuring cattle breaking insufficient fence.
7. Act, when to take effect.

Fields, how to be enclosed.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all fields and enclosures shall be enclosed with a fence sufficiently close, composed of posts and rails, posts and palings, posts and planks, palisades, or rails alone laid up in the manner commonly called a worm fence, or turf with a ditch on either side, or wall of rock or stone four and a half feet high.

What fence, &c., sufficient.

SEC. 2. All such fences composed of posts and rails, posts and palings, posts and plank (or) palisades, shall be at least five feet high; those composed of turf shall be at least four feet high, with trenches on either side at least three feet wide at the top, and three feet deep; and what is commonly called a worm fence, shall be at least five feet high to the top of the rider, if not ridered shall be five feet to the top rail, and the corners shall be locked with strong rails, poles or stakes.

Sufficiency of fence how determined.

SEC. 3. In all cases the sufficiency of the worm shall be determined by the persons who may be summoned to view said fence.

Liability of owner if cattle break into legal enclosure.

SEC. 4. If any horse, cattle or stock shall break into any enclosures, the fence being of the height and sufficiency aforesaid, or if any hog, shote or pig shall break into the same, the owner of such animal shall, for the first trespass, make reparation to the party injured for the true value of the damages he shall sustain, and for every trespass thereafter, double damages, to be recovered with costs before a justice of the peace, or in any court of record having cognizance of the same, demanded by the party injured; for the third offence from any of the animals aforesaid breaking into such enclosure, the party injured may take up such animals and keep the same at the expense of the owner; all animals so taken and kept in accordance with the provisions of this section, shall be held as surety for the expenses of keeping: *Provided*, That the owner may at any time pay charges and take such animals away.

Justice when to order view of fence.

SEC. 5. Upon the complaint of the party injured to any justice of the peace of the county, such justice shall issue his order without delay to three disinterested householders of the neighborhood, no ways related to the parties, reciting the complaint, and requiring them to view the fence where the trespass is complained of, and take a memorandum of the same, and their testimony in such cases shall be good evidence on the trial touching the lawfulness of the fence.

Penalty for injuring cattle breaking insufficient fences.

SEC. 6. If any person damnified for want of such sufficient fence, shall hurt, lame, kill or destroy, or cause the same to be done by shooting or otherwise, any of the animals in this act mentioned, such person shall satisfy the owner in double damages, with costs.

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SEC. 7. This act to take effect and be in force from and after the first day of May next.

*Passed January 18th, 1854.*

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## *AN ACT* RELATING TO MARRIAGE AND DIVORCE.

## CHAPTER I.

### OF MARRIAGE.

SEC. 1. Marriage a civil contract.
2. Who capable of contracting marriage.
3. Who not to marry or intermarry.
4. Marriages, by whom to be solemnized.
5. When consent of parent or guardian necessary to marriage of minor.
6. No particular form in solemnization required; two witnesses required.
7. When certificate of marriage to be given, and what to contain.
8. Record to be made and certificate to be delivered to recorder of deeds; form of certificate.
9. Certificate to be filed and recorded by recorder; his fees.
10. Forfeiture for neglect to make and deliver, or record certificate.
11. Penalty for making false certificate.
12. Penalty for unauthorized person solemnizing marriage.
13. When marriage by unauthorized person valid.
14. Certificate of marriage and record thereof evidence.
15. Illegitimate children legitimatized by marriage of parents.
16. Marriage not solemnized as required by this chapter, when valid.
17. Fines and forfeitures to be paid into county treasury.
18. Quaker marriages valid.

Marriage, a civil contract.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential.

Who may contract.

SEC. 2. Every male person who shall have attained the full age of eighteen years, and every female who shall have attained the full age of fifteen years, shall be capable in law of contracting marriage, if otherwise competent: *Provided, however,* That nothing in this act shall be construed so as to make the issue of any marriage illegitimate, if the person shall not be of lawful age.

Who not to marry.

SEC. 3. No marriage shall be contracted while either of the parties shall have a husband or wife living; nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether the half or the whole blood.

By whom solemnized.

SEC. 4. Marriages may be solemnized by any justice of the peace in the county in which he is elected, and they may be solemnized throughout the territory by any judge of a court of record, and by ministers of the gospel or such other person as may be authorized by any church.

When consent of parent or guardian necessary, &c.

SEC. 5. If any person intending to marry shall be under the age of twenty-one, if a male, or under the age of eighteen years, if a female, and shall not have had a former wife or husband, the consent in person or in writing of the parent or guardian having the custody of such minor, if he or she have either a parent or guardian living in this territory, shall be given to the person solemnizing the marriage before such marriage shall take place.

SEC. 6. In the solemnization of marriage, no particular form shall be required, except that the parties shall declare, in the presence of the judge, minister or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

No particular form required; two witnesses necessary.

SEC. 7. Whenever a marriage shall have been solemnized, the person solemnizing the same shall give to each of the parties, if required, a certificate thereof, specifying therein the names and residences of the parties, and of at least two witnesses present, and the time and place of such marriage, and where the consent of the parent or guardian is necessary, stating that the same was duly given.

When certificate to be given; what to contain.

SEC. 8. Every person solemnizing a marriage shall make a record thereof, and within three months after such marriage, shall make and deliver to the recorder of deeds of the county where the marriage took place, a certificate, under his hand, containing the particulars mentioned in the preceding section. The certificate may be in the following form:

Record to be made, certificate to be delivered to the recorder of deeds.

*Territory of Oregon,* } *ss:*
*County of* }

This is to certify that the undersigned, a justice of the peace of said county (minister of the gospel, or judge, &c., as the case may be) did, on the ——— day of ———, A. D. 18—, join in lawful wedlock A. B. and C. D., with their mutual consent, in presence of E. F. and G. H., witnesses.

J. P., *Justice of the Peace.*

Form.

SEC. 9. All such certificates shall be filed and recorded by the said recorder, in a book to be kept by him for that purpose; and for recording the same, such recorder shall receive a fee of one dollar from the person solemnizing the marriage, who shall be entitled to receive the same from the parties before the marriage.

Certificate to be filed, and recorded, &c.

SEC. 10. Every person solemnizing a marriage, who shall neglect to make and deliver to the recorder a certificate thereof within the time above specified, shall forfeit, for such neglect, a sum not less than ten, nor more than twenty dollars; and every recorder who shall neglect to record such certificate so delivered, shall forfeit the like penalty.

Forfeiture for neglect to deliver or record certificate.

SEC. 11. If any person shall wilfully make any false certificate of any marriage, or pretended marriage, he shall forfeit, for every such offence, a sum not exceeding five hundred dollars, or may be imprisoned in the county jail not exceeding one year.

Penalty for making false certificate.

SEC. 12. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, or knowing to any legal impediment to the proposed marriage, he shall, on conviction, be fined in any sum not exceeding three hundred dollars.

Marriage by an unauthorized person.

SEC. 13. No marriage solemnized before any person professing to be a judge, justice or minister, shall be deemed or adjudged to

When marriage by unauthorized person valid.

be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed judge, justice or minister, provided the marriage be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Certificate and record, evidence.

SEC. 14. The original certificates and records of marriage, made by the judge, justice or minister, as prescribed in this chapter, and the record thereof by the recorder of the county, or a copy of such record duly certified by such recorder, shall be received in all courts and places, as presumptive evidence of the fact of such marriage.

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SEC. 15. Illegitimate children become legitimatized by the subsequent marriage of their parents with each other.

ithout lemniza- ın, when void.

SEC. 16. Marriages contracted with the consent of the parties, when the residence of the parties is remote from any person duly authorized to solemnize such marriage, in any other manner than is herein prescribed, shall be valid: *Provided*, That no legal impediment shall exist thereto; such contracts shall be made in writing, duly attested, and shall be recorded in the office of the recorder of deeds of the proper county, within sixty days after the execution of the same.

Fines, &c.

SEC. 17. All fines and forfeitures arising in consequence of a breach of this chapter, shall be paid into the county treasury for the use of the county; and in all cases when a violation of the provisions of this chapter is not declared a misdemeanor, said fines and forfeitures shall be recovered by a civil action, to be brought by any person aggrieved, or by the county treasurer.

Quaker marriages.

SEC. 18. All marriages solemnized among the people called "Friends" or "Quakers," in the form heretofore practiced, and in use in their meetings, shall be good and valid.

# CHAPTER II.

## DIVORCE AND ALIMONY.

SEC. 1. Marriage, when void without divorce.
2. When void from time its nullity is declared.
3. When marriage shall not be declared void.
4. Proceedings to annul a marriage supposed to be void.
5. When and for what causes divorce may be granted.
6. Notice to non-resident defendant, when sufficient; compulsory proceedings to obtain appearance, &c., when.
7. Court to make disposition of, and provision for children; child, when to be left with mother.
8. As to the disposition of property of parties by the court.
9. As to how evidence may be taken, pleadings, &c.
10. When wife entitled to dower.
11. Order of divorce, to dissolve marriage contract as to both parties; court may change name of wife.
12. Act, when to take effect.

Marriages when void without divorce.

SECTION 1. All marriages which are prohibited by law, on account of consanguinity between the parties, or on account of either of them having a former husband or wife, then living, shall, if solemnized within this territory, be absolutely void, without any decree of divorce, or other legal proceedings.

When void from time its nullity is declared.

SEC. 2. When either of the parties to a marriage, for want of age or understanding, shall be incapable of assenting thereto, or when the consent of either party shall have been obtained by force or fraud, and there shall have been no subsequent voluntary cohabitation of the parties, the marriage shall be void from the time its nullity shall be declared by a court of competent authority.

When not to be declared void.

SEC. 3. In no case shall a marriage be adjudged a nullity, on the ground that one of the parties was under the age of legal consent, if it shall appear that the parties, after they had attained such age, had, for any time, freely cohabited together as husband and wife; nor shall the marriage of any insane person be adjudged void, after his restoration to reason, if it shall appear that the parties freely cohabited together, as husband and wife, after such insane person was restored to a sound mind.

Proceedings to annul a marriage supposed to be void.

SEC. 4. When a marriage is supposed to be void, or the validity thereof is disputed, for any of the causes mentioned in the two preceding sections, either party may file a complaint in the District Court of the county where the parties, or one of them, resided, for annulling the same; and such complaint shall be filed, and proceedings shall be had thereon, as in the case of proceedings in said court for a divorce, and upon due proof of the nullity of the marriage, it shall be adjudged null and void.

When and for what causes divorce may be decreed.

SEC. 5. Divorce from the bonds of matrimony may be obtained by complaint, under oath, to the District Court of the county in which the cause therefor shall have occurred, or in which the defendant shall reside or be found, or in which the plaintiff shall reside, if the latter be either the county in which the parties last cohabited, or in which the plaintiff shall have resided for six months before suit be brought for the following causes:

1. Impotency at the time of the marriage, continuing to the time of the divorce;
2. Adultery since the marriage, remaining unforgiven;
3. Wilful desertion of either party by the other, for the space of one year;
4. Conviction of felony, or infamous crime;
5. Habitual gross drunkenness, contracted since marriage;
6. Harsh and cruel treatment, or personal indignities, rendering life burdensome;

7. Voluntary neglect of the husband to provide the wife with a home and the common necessaries of life for the space of one year.

Notice to non-resident defendant.

SEC. 6. If the defendant is not a resident of the territory, or cannot, for any cause, be personally summoned, the court or judge, in vacation, may order notice of the pendency of the suit to be given, in such manner and during such time as shall appear most likely to convey a knowledge thereof to the defendant, without undue expense or delay; and, if no such order be made, it shall be sufficient to publish such notice in a weekly newspaper, printed in or nearest to the county in which the suit is pending, four weeks in succession; and if the defendant fail to appear and make defence, at the first term after such notice, or after ten days' personal service of summons, the evidence may be heard, and the cause decided at that term; or compulsory process may be had to obtain an appearance or answer, if it be necessary, to the disposition of property, or of children.

Appearances compelled, when.

Disposition of, and provision for children.

SEC. 7. The court, in granting a divorce, shall make such disposition of, and provisions for the children, as shall appear most expedient under all the circumstances, and most for the present comfort and future well being of such children; and when at the commencement, or during the pendency of the suit, it shall be made to appear to the court, or to any of the judges in vacation, that any child of the wife, whether she be plaintiff or defendant, which is too young to dispense with the care of its mother, or other female, has been, or is likely to be taken, or detained from her, or that any child of either party has been, or is likely to be taken, or removed by, or at the instance of the other party, out of the county, or concealed within the same, it shall be the duty of the court, or of such judge in vacation, forthwith to order such child to be produced before him, and then to make such disposition of the same, during the pendency of the suit, as shall appear most advantageous to such child, and most likely to secure to it the benefit of the final order to be made in its behalf; and all such orders may be enforced and made effectual by attachment, commitment, and requiring security for obedience thereto, or by other means, according to the usages of courts, and to the circumstances of the case.

Court how to dispose of property of parties.

SEC. 8. In granting a divorce, the court shall also make such disposition of the property of the parties, as shall appear just and equitable, having regard to the respective merits of the parties, and to the condition in which they will be left by such divorce, and to the party through whom the property was acquired, and to the burdens imposed upon it, for the benefit of children. And all property and pecuniary rights and interests, and all rights touching the children, their custody and guardianship, not otherwise disposed of or regulated by the order of the court shall, by such divorce, be divested out of the guilty party, and vested in the party at whose instance the divorce was granted. And if, after the filing of the petition, it shall be made to appear probable to the court, or any of the judges in vacation, that either party is about to do any act that would defeat or render less effectual any order which the court might ultimately make concerning property or pecuniary interests, an order shall be made for the prevention thereof, to be enforced as such preliminary orders are enforced respecting children.

Evidence, how taken; pleadings, &c.

SEC. 9. The testimony of witnesses, in suits for divorce, shall be given orally in court, with the right to either party to take and use depositions on the same terms and in the same manner as in actions at law; and the pleadings, proceedings and practice shall conform to those at law, as nearly as conveniently may be; but all preliminary and final orders may be in such form as will best effect the object of this act, and produce substantial justice.

When wife entitled to dower.

SEC. 10. When the marriage shall be dissolved by the husband being sentenced to imprisonment, and when a divorce shall be ordered for the cause of adultery, committed by the husband, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower in any other case of divorce.

SEC. 11. Whenever an order of divorce from the bonds of matrimony is granted in this territory, by a court of competent authority, such order shall fully and completely dissolve the marriage contract as to both parties. And in all suits for a divorce, brought by a female, if a divorce be granted, the court may, for just and reasonable cause, change the name of such female, who shall thereafter be known and called by such name as the court shall, in its order or decree appoint.

Order of divorce to dissolve the marriage contract as to both parties.

Court may change name of wife.

SEC. 12. This act shall take effect and be in force from and after the first day of May next.

Act, when to take effect

*Passed January 17th*, 1854.

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## *AN ACT* TO ORGANIZE THE MILITIA.

## CHAPTER I.

### MILITIA.

SEC. 1. Oregon to constitute one district; appointment of brigadier-general, his term of office.
2. Regimental officers, how elected; company districts, when and how formed; company officers, when chosen.
3. Captain to appoint non-commissioned officers.
4. Officers to be commissioned by governor; term of office.
5 Colonel, when and how may be removed.
6. Other regimental officers, how removed; proviso.
7. Appeal from regimental to brigade court-martial, court-martial, sentence of inoperative till approved.
8. Captain to give annual list to colonel, of persons capable of bearing arms; regimental returns; report of brigadier.
9. When captain may assemble company.
10. When colonel may assemble regiment.
11. Officers may be expelled for refusing to drill.
12. Privates and non-commissioned officers may be fined.
13. Officers to rank according to date of commission.
14 Governor and brigadier to prescribe rules for court-martial.
15. As to formation of volunteer companies.
16. Arms when to be sent to county.
17. County commissioners to have care, &c., of arms.
18. Governor to appoint adjutant quartermaster and commissaries-general; duties, &c., of quartermaster.
19. Officers to be commissioned by governor; their oath.
20. Governor to fill all vacancies.
21. Consequence of failing to qualify.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the territory of Oregon shall constitute one military district for brigade purposes, in which the governor shall appoint a resident citizen thereof brigadier-general, who shall hold his office for three years, unless sooner removed by the governor; and each council district in said territory shall constitute one regimental district.

District of Oregon.

Brigadier general; his appointment &c.

SEC. 2. At the next annual election, the legal voters in each council district shall elect, in the usual mode of electing other offi-

Election of regimental officers.

cers, one colonel, one lieutenant-colonel and one major, who shall assemble at such place within the district as a majority of them shall select, within three months after their election, and proceed to lay off their regimental district into convenient company districts, containing as near one hundred white males as may be, between the ages of eighteen and forty-five years, capable of bearing arms; and shall appoint one captain and two lieutenants in each district, as officers therein.

Company districts.

Company officers how appointed.

Captain to appoint serjeants, &c.

SEC. 3. Such captain shall appoint four serjeants and four corporals in each company, who shall continue in office one year.

What officers to be commissioned by governor.

SEC. 4 All such officers, except serjeants and corporals, shall be commissioned by the governor, and continue in office for the term of two years, unless bodily infirmity or unsoundness of mind prevent them from discharging active duty, or they be removed by a court-martial for other good cause.

Colonel, how removed.

SEC. 5. Any colonel may be removed after reasonable notice and trial by a brigade court-martial, composed of a majority of the colonels of the brigade.

Other regimental officers, how removed.

Proviso.

SEC. 6. Any lieutenant-colonel, major, captain or lieutenant, may be removed after reasonable notice and trial by a regimental court-martial, composed of a majority of all the commissioned officers of such regiment: *Provided*, That no officer shall be tried by a court-martial, without first having been provided with a copy of the charges and specifications, at least thirty days previous to such trial.

Appeal from regimental court martial.

Court-martials to be approved, how.

SEC. 7. Any person aggrieved may appeal from a regimental court-martial to a brigade court-martial, under such regulations as shall be prescribed by such courts: *Provided*, That the proceedings of a regimental court martial shall be inoperative, unless sanctioned by the brigade general; and no brigade court-martial shall be operative, without having received the sanction of the governor.

Captain to make list of persons capable of bearing arms.

Regimental returns.

Report of brigadier.

SEC. 8. In each year, every captain shall make out a list of all the persons in his district subject to bear arms, and forward a copy thereof to the colonel of the regiment, who shall thereupon make out and forward to the brigadier-general a regimental return, showing the number of each rank and grade composing his regiment. It shall be the duty of the brigadier-general to report annually or oftener, if required, to the governor, the state of the militia, the number of regiments, and the number of the different rank and grade in each, together with such other information as shall be in his possession, relating thereto.

Captain may assemble company, when.

SEC. 9. Each captain, after giving ten days' written notice, posted up in four public places in his company district, may assemble his company once in each year at a convenient time and place within the district, and drill them according to the tactics of the United States army.

When colonel may assemble regiment.

SEC. 10. Each colonel, after thirty days' written notice, posted up in four public places in each company district of his regiment, may assemble his regiment at such place as he shall designate in his district, for regimental or battalion drill.

Officers refusing to drill, may be expelled.

SEC. 11. Any commissioned officer who shall neglect or refuse to attend any company, battalion or regimental drill, as provided for in this act, may be expelled, suspended or reprimanded at the discretion of a court-martial.

Ib. Privates, &c., fined.

Fine, how appropriated

SEC. 12. Any private or non-commissioned officer who shall neglect or refuse to attend any company, battalion, or regimental drill, as provided for by this act, or who shall conduct himself in a disorderly manner, while attending such drill, shall be fined in the sum of ten dollars for each offence, and may be prosecuted therefor before any justice of the peace in the county in which he resides, upon complaint of any member of his company; such fine shall be paid over to the captain, and be appropriated for the use of the company, in such manner as a majority of the members thereof shall determine.

Officers to rank by seniority.

SEC. 13. Each officer shall hold rank according to the date of his commission, and in presiding at court-martials and drills, in the absence of the superior, the duties to be performed shall devolve upon the next highest officer present.

Governor and brigadier to prescribe rules.

SEC. 14. The governor and brigadier-general shall, from time to time, prescribe all rules and regulations, not herein provided, necessary for the calling and conducting court-martials.

Volunteer companies may be formed.

SEC. 15. Volunteer companies may be formed within the bounds of any regiment, under such rules and regulations as may be prescribed by the colonel thereof, and approved by the brigadier-general.

Arms when to be sent to county.

SEC. 16. On application by the board of commissioners of any county, by a certified copy of their order therefor, the governor shall cause to be sent to such county, at its expense, its quota of the public arms.

County commissioners to have charge of arms, &c.

SEC. 17. Such board of county commissioners shall have the care of all public arms within their respective counties, and may transfer them under such regulations as they may prescribe, to such volunteer companies, battalions or regiments, on having the safe keeping and return thereof when demanded by the authorized agent of the board, secured by bond and approved sureties.

Governor to appoint quartermaster and commissaries.

Quartermaster's duties, &c.

SEC. 18. The governor shall appoint an adjutant, quartermaster, and commissary-generals; and such quartermaster-general shall have the custody of all public arms not distributed among the several counties, and shall preserve the same in good order in some suitable room, at the seat of government, until they are legally disposed of, for which he shall have a reasonable compensation, to be allowed by the Legislative Assembly.

Officers how commissioned, their oath.

SEC. 19. All commissioned officers provided for in this act, shall be commissioned by the governor, and, on receiving their commission, each shall take an oath to be indorsed on the back thereof, before an officer authorized to administer oaths, that he will support the constitution of the United States, and faithfully discharge the duties of his office, according to law.

Governor to fill vacancies, &c.

SEC. 20. The governor shall fill all vacancies which shall occur by death, absence, resignation, or other disability of officer, men-

TITLE I. tioned in this act; and in regimental or company districts, when the people fail to elect officers as provided by this act, it shall be the duty of the governor to fill such vacancies by appointment.

Failing to qualify. SEC. 21. If any person elected to an office, provided for by this act, shall fail to qualify in thirty days after his appointment or election, the office shall be deemed vacant, and it shall be competent for the governor to fill the same by appointment.

*Passed February 2d, 1854.*

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## *AN ACT* RELATING TO THE GRANTING OF LICENSES TO SELL SPIRITUOUS LIQUORS, AND TO THE LICENSING OF BILLIARD TABLES, BALL ALLEYS AND PEDLERS.

## CHAPTER I.

### SPIRITUOUS LIQUORS, BILLIARD TABLES, &c.

TITLE I. *Of Spirituous Liquors.*
TITLE II. *Of Billiard Tables and Ball Alleys.*
TITLE III. *Of Pedlers.*

## TITLE I.

### *Of Spirituous Liquors.*

SEC. 1. License to sell spirituous liquors, how obtained.
2. Price of grocery license.
3. Commissioners to grant license on receipt of treasurer.
4. Bond of applicant to be filed.
5. Liquor not to be sold on Sunday.
6. Fine for selling without license, appropriated to schools.
7. Certain officers to complain of unlicensed groceries
8. Clerk to deliver to grand jury list of licensed persons.
9 Duty of grand jury to indict unlicensed persons.

License how obtained. SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That no person shall be permitted to sell spirituous liquors in this territory by less measure than one quart, without having obtained a license from the board of county commissioners of the proper county for that purpose.

Price of grocery license. SEC. 2. Every person applying for a grocery license to sell spirituous liquors in a less quantity than a quart, shall pay into the county treasury the sum of one hundred dollars per annum, and in the same proportion for a less period: *Provided,* That no license shall be granted for a less period than six months.

Commissioners to grant license. SEC. 3. On the applicant producing to the county commissioners the receipt of the county treasurer for the payment of the sum fixed in the preceding section, they shall give him a license for the term his receipt may call for.

Bond to be filed. SEC. 4. Every person applying for a license to sell spirituous liquors in a less quantity than one quart, before receiving the same, shall execute to the board of county commissioners of the proper county, a bond in the penal sum of five hundred dollars, with two or more sufficient sureties, conditioned that he will keep an orderly house, and that he will not permit any unlawful gaming or riotous conduct in or about his house; and in case of a violation of the foregoing conditions by any person giving such bond, he shall be liable to pay a fine of not less than ten, nor more than fifty dollars for any such violation; the same to be for the use of the common schools of the county in which the offence was committed, to be recovered in a civil action, as hereinafter prescribed; and the bond so given as aforesaid by such person, shall also be liable to be prosecuted as hereinafter prescribed, for any violation of its conditions.

Not to sell on Sunday.

SEC. 5. No person shall keep open any house or room in which intoxicating liquor is kept for retail, on the first day of the week, commonly called Sunday, or give or sell, or otherwise dispose of intoxicating liquors on that day; any person violating the section shall be fined in any sum not exceeding twenty-five, nor less than ten dollars for each offence; and such fine to be for the use of common schools in the county in which the offence was committed: *Provided*, That this section, so far as it prohibits keeping open a house or room, shall not apply to tavern keepers.

Penalty for selling without license.

SEC. 6. If any person or persons shall barter, sell or dispose of in any manner any spirituous liquors, without having first obtained a license agreeably to the provisions of this chapter, he shall, upon conviction thereof, by indictment, in any court having jurisdiction of the same, be fined in any sum not exceeding two hundred, nor less than fifty dollars, for the use of common schools in the county where the offence shall have been committed; and upon failure to pay the fine so assessed, shall be confined in the county jail one day for every two dollars thereof, until said fine be discharged.

Certain officers to complain of unlicensed groceries.

SEC. 7. And it is hereby made the duty of the prosecuting attorney, sheriffs, constables and justices of the peace, knowing of any violation of the provisions of this chapter, to make complaint thereof to the grand jury at the next session of the District Court of the county in which the offence may have been committed after said violation; and the moneys collected on such judgment, except taxable costs, shall be paid to the treasurer of the proper county, for the use of the common schools therein. It shall also be the duty of the clerk of the board of county commissioners to prosecute the bond given by such applicant, as is required by the fourth section of this chapter, for any violation of its conditions.

Fines Appropriated schools.

List of licenses to grand jury

SEC. 8. Every clerk of the board of county commissioners shall, on the first day of the term of each District Court, deliver to the grand jury an accurate list of all persons holding licenses under the provisions of this chapter, within the county, which list shall show the date and expiration of each license.

Duty of jury to indict unlicensed persons.

SEC. 9. It shall be the duty of the grand jury, at each and every term of the District Court in any county in this territory, to make a strict inquiry, and return bills of indictment against every person violating any of the provisions of this chapter.

## TITLE II.

### *Of Billiard Tables and Ball Alleys.*

SEC. 10. No person to keep billiard table without license.
11. License, how obtained.
12. Tax on billiard saloons.
13. Penalty for violating previous sections; fines, appropriated common schools.

License. SEC. 10. No person shall be permitted to keep a billiard table or ball alley to let for hire, without obtaining a license from the board of county commissioners of the proper county for that purpose.

How obtained. SEC. 11. Any person wishing to keep a ball alley (commonly called a nine-pin alley) or ball alleys, provided that they are all kept in the same room, shall pay into the county treasury the sum of fifty dollars per annum, and at the same rate for a shorter period; *Provided*, That no license shall be granted for a shorter period than six months. Upon the production of the receipt of the county treasurer, by the applicant, for the required sum, the county commissioners shall grant said applicant a license for the term to which his receipt may entitle him.

Tax on billiard saloons. SEC. 12. Any person wishing to keep a billiard saloon, or billiard table or billiard tables, providing all said tables are kept in the same room, shall pay into the county treasury the sum of fifty dollars per annum, and at the same rate for a shorter period: *Provided*, That no license shall be granted for a shorter period than six months; and upon the applicant producing to the county commissioners the receipt for the required sum, they shall grant said applicant a license for the term to which his receipt may entitle him.

Penalty for violating prior sections. SEC. 13. If any person shall violate the provisions of any of the three preceding sections, he shall be liable to indictment in the same manner as for a violation of the license law relating to spirituous liquors, and shall be subject to the same punishment; and all fines when collected, shall be appropriated in the same way; and it is hereby made the duty of the prosecuting attorney, sheriffs and justices of the peace, to make complaint to the grand jury of the violation of said provisions.

## TITLE III.

### *Of Pedlers.*

SEC. 14. Pedlers must obtain license; penalty for peddling without.
15. Pedler, when entitled to license.
16. Act, when to take effect

License. SEC. 14. No pedler shall be permitted hereafter to vend, sell or retail at private sale, any goods, wares and merchandise, without first having obtained a license for that purpose from the county commissioners of the county in which said pedler may intend to offer said goods for sale, and paying such sum as said commissioners shall assess, not less than ten nor more than two hundred dollars per annum, or at the same rate for a shorter period; and if any person or persons shall peddle any goods, wares or merchandise,

Cost of.

Penalty for peddling without.

within any county in this territory, without first having obtained a license for that purpose, such person or persons, so offending, shall forfeit and pay any sum not exceeding two hundred, nor less than fifty dollars, to be recovered by action at law, in the name of the county commissioners of the proper county, for the use of said county, before any justice of the peace, or any court of record having jurisdiction thereof.

When entitled to license.

SEC. 15. No person or persons applying for a license or permit, shall be entitled to the same, until he or they shall file with the clerk of the board of county commissioners a receipt from the county treasurer, for the amount ordered to be paid by such applicant or applicants, agreeably to the provisions of this chapter.

Act when to take effect.

SEC. 16. This act shall take effect and be in force from and after the first day of May next.

*Passed January 18th, 1854.*

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## *AN ACT* TO AMEND AN ACT, ENTITLED AN ACT RELATING TO THE GRANTING OF LICENSES TO SELL SPIRITUOUS LIQUORS.

SEC 1. Petition, what to contain.
2. Before obtaining signatures to petition, applicant must post notice.
3. Petitioners considered a majority, unless, &c.
4. License, when to be granted.
5. Conflicting acts repealed.
6. Act, when to take effect.

Petition for license.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That any person wishing to sell spirituous liquors in a less quantity than one quart, before proceeding to procure a license, according to an act relating to the granting of license to sell spirituous liquor, shall, at his own trouble and expense, obtain the signature of a majority of the whole number of legal voters in the respective precinct in which he may wish to sell spirituous liquors, praying that the said license may be granted; or if it be in a city or town properly divided into wards, then by a signature of a majority of the whole number of legal voters in the city, town, or ward, in which the applicant may wish to sell spirituous liquors, praying that said license may be granted.

Prior notice to be published.

SEC. 2. That before proceeding to obtain the signature of the voters in the precinct, city or town or ward, in which the applicant wishes to sell spirituous liquor, he shall post notices in three of the most public places in the precinct, city or town or ward, stating that ten days after date of said notices, he will apply to the commissioners' court of the respective county for a license to sell spirituous liquors.

What considered a majority

SEC. 3. That the reputed majority of the whole number of voters, as obtained by the applicant, shall be considered a majority of the whole number by the commissioners' court, unless remonstrance shall be signed and presented on the day of application by a greater number of the voters of said precinct, city, town or ward.

SEC. 4. If the notice shall be given as provided herein, license

CHAP. 1. License when to be granted. shall be granted, in case no remonstrance is presented at the time appointed for applying for said license.

Acts repealed. SEC. 5. Any act or part of an act conflicting with the above amendment is hereby repealed.

When to take effect. SEC. 6. This act to take effect and be in force from and after its passage.

*Passed January 25th, 1855.*

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## *AN ACT* PROVIDING FOR THE APPOINTMENT OF A LIBRARIAN, AND DEFINING HIS DUTIES.

## CHAPTER I.

### APPOINTMENT OF A LIBRARIAN.

SEC. 1. Election of librarian; term of office; residence and bond.
2. Librarian, what to have charge of.
3. To provide a library room.
4. Library, at what hours to be kept open.
5. As to who may draw books.
6 When to be kept open for citizens; governor may prescribe rules.
7. Salary of librarian, how paid.
8. Librarian to make annual report to Legislative Assembly.
9. Act, when to take effect.

Election. Residence. Bond, &c. SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be elected annually, by the Legislative Assembly, a librarian, who shall reside at the seat of government, and shall give bond to the secretary of the territory, with sufficient surety, to be approved by said secretary, in the sum of five thousand dollars, conditioned impartially and faithfully to perform the duties of his office.

What to have charge of. SEC. 2. Said librarian shall have the custody and direction of all books, papers, maps, charts, engravings, paintings and all other things properly belonging or appertaining to the library of the territory, and shall take especial care that none of them be lost or injured.

To provide library room. SEC. 3. He shall provide, at the seat of government, and as convenient as may be to the rooms occupied by the Legislative Assembly, a proper room for the safe keeping of said library, and all things appertaining thereto which shall be entrusted to his care.

Library, when to be open. SEC. 4. The library shall be kept open during the sessions of the Legislative Assembly and the Supreme Court, from the hour of nine A. M. to nine P. M., of each day.

Who may draw books. SEC. 5. No person shall be allowed to remove a book from the library, except the federal officers of the territory, members of the Legislative Assembly, during the session thereof, and members of the bar during the sessions of courts, who shall, on taking any book from said library, be required to give receipt therefor.

When to be open for SEC. 6. The library shall be open at all reasonable times for the free admission of all citizens of this territory, and the governor is hereby authorized to prescribe such further rules, not inconsistent with the provisions of this act, for the care and conduct of said library, as the public good may require. CHAP. 1 citizens. Governor may prescribe rules.

SEC. 7. The librarian shall annually receive for his services, the sum of two hundred and fifty dollars, payable quarterly by the secretary of the territory, out of the fund appropriated by Congress to defray the expenses of the Legislative Assembly. Salary.

SEC. 8. The librarian shall annually report to the Legislative Assembly, within ten days after the commencement of each regular session, a detailed statement of the condition of said library, a catalogue of the books, and the incidental expenses incurred in the custody of the same. Report.

SEC. 9. This act to be in force from and after its passage. Act, when to take effect.

*Passed January 31st, 1854.*

## *AN ACT* FIXING THE COMPENSATION OF TERRITORIAL LIBRARIAN.

SEC. 1. His salary.
2. Conflicting acts repealed.
3. Act, when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the salary of the territorial librarian shall be and hereby is fixed at five hundred dollars per annum. Salary.

SEC. 2. All acts now in force in this territory, conflicting with this act, are hereby repealed. Repeal of acts.

SEC. 3. This act shall take effect and be in force from and after its passage. When to take effect.

*Passed January 30th, 1855.*

## *AN ACT* TO TAKE THE SENSE OF THE PEOPLE, RELATIVE TO THE FORMATION OF A STATE CONSTITUTION.

SEC. 1. Poll, when to be opened.
2. Duty of judges and clerks of election.
3. Vote how taken, certified and canvassed.
4. Secretary of territory, when to make abstract; publication of abstract and certificate; election of delegates, when.
5 Number of delegates
6. Election of delegates, how conducted.
7. Delegates, when and where to meet
8 Compensation of delegates.
9. Constitution to be submitted to the people for adoption.
10. Act, when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That for the purpose of taking the sense of the people of the territory, upon the formation of a state government, a poll shall be opened at the general election, to be held on the first Monday of June next, for the reception of votes for and against a constitution. Poll when to be opened.

Vote, how entered and taken.

SEC. 2. That it shall be the duty of the judges and clerks of elections, at each and every precinct within the territory, to prepare separate columns, in which shall be entered the votes for and against a constitution; and it shall be the duty of the judges of the several precincts within this territory, to ask each and every voter that may offer his vote, the question, are you for a constitution or against a constitution? and according to their desire the vote shall be recorded by the clerks of their respective precincts.

Ib. How certified.

SEC. 3. The vote for and against a constitution shall be taken, certified and canvassed in the same manner and under like regulations, as by law is provided for the vote for members of the territorial Legislature.

Abstract by secretary of territory, and certificate of result.

SEC. 4. That within twenty days after the vote shall be canvassed in manner aforesaid, it shall be the duty of the secretary of the territory to make out an abstract of vote from the several counties for and against a convention, together with a certificate of the final result of the whole vote, and cause the same to be published in the several newspapers of this territory; and if, by such abstract and certificate, published as aforesaid, it shall appear that a majority of all the votes cast for and against a convention, shall have been cast for a convention, then in that case an election shall be held in the several counties of the territory, on the first Monday of September following, for the election of delegates to form a constitution and state government.

Number of delegates.

SEC. 5. Each county shall be entitled to elect twice as many delegates to such convention, as such county has representation in the House of Representatives of the Legislative Assembly.

Election, how conducted.

SEC. 6. That the election of delegates to the convention, shall be conducted and held, canvassed and certified in the same manner and under like regulations as elections of members of the Legislative Assembly.

Delegates, when to meet.

SEC. 7. That it shall be the duty of the delegates elected as aforesaid, to meet at the seat of government of the territory, on the first Monday in February following, and proceed to the formation of a state constitution.

Their compensation.

SEC. 8. The delegates to said convention shall be allowed such compensation as shall be hereafter allowed by law, or appropriated by Congress, for such payment.

Constitution to be submitted.

SEC. 9. That the constitution herein provided for, before taking effect, shall be submitted for adoption, to a vote of the qualified electors within the boundaries of the proposed state, at such time as shall be provided for by the constitution.

Act, when to take effect.

SEC. 10. This act shall take effect and be in force from and after its passage.

*Passed January 30th*, 1855.

## *AN ACT* TO REPEAL ALL ACTS HERETOFORE PASSED, WITH CERTAIN EXCEPTIONS

CHAP. 1.

SEC 1. Acts herein repealed.
2. Acts not herein repealed
3. Criminal and civil actions heretofore commenced, to be prosecuted as if this act had not been passed
4 Act, when to take effect

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That all the statutes of a general nature passed or in force before the commencement of the present session of the Legislative Assembly, except those enumerated in the next section, be, and the same are hereby repealed. Acts repealed.

SEC. 2. The following acts shall not be repealed by the provisions of the last section, to wit: Acts not repealed.

"An act to provide against dangerous and vicious cattle," passed September 13th, 1849;

"An act for the establishment of a pilotage on the Columbia and Willamette river," passed September 19th, 1849;

"An act fixing the rate of toll for grinding," passed January 9th, 1851;

"An act to provide for the selection of places, for location and erection of the public buildings of the territory of Oregon," passed February 1st, 1851;

"An act to provide for the selection and location of two townships of land, to aid in the establishment of a university," passed December 17th, 1851;

"An act creating the office of commissioner to control, protect and sell the public lands, donated by Congress to the territory of Oregon, for the establishment and endowment of a university, and to define his powers and duties," passed January 20th, 1852;

"An act supplementary to an act, entitled an act to provide for the selection of places for the location and erection of the public buildings of the territory of Oregon," passed January 28th, 1853;

"An act to create a board of commissioners to erect the territorial university, and to define their duties," passed January 20th, 1853;

"An act to amend an act to provide for the selection of places, for location and erection of public buildings of the territory of Oregon," passed January 22d, 1853;

"An act to create the office of prosecuting attorney," passed January 26th, 1853; and

"An act authorizing county commissioners to locate land for the benefit of county seats," passed January 31st, 1853.

SEC. 3. All crimes and misdemeanors, committed prior to the time when this act shall take effect, shall be prosecuted and punished in the same manner as if this act had not been passed; and all actions and suits in law or equity, commenced prior to that time, shall be prosecuted to final judgment as though this act had not been passed. Provision for criminal and civil actions heretofore commenced.

SEC. 4. This act shall take effect and be in force from and after the first day of May next. Act, when to take effect.

*Passed January 30th, 1854.*

## *AN ACT* FOR THE ESTABLISHING OF A PILOTAGE ON THE COLUMBIA AND WILLAMETTE RIVERS.

SEC. 1. Board of commissioners, who to constitute; to examine and appoint pilots; pilot may appoint deputies, subject, &c.; vacancies in board, how filled.
2. Bond of pilot or deputy; condition of, &c.
3. When pilot to take charge of vessel bound into Columbia river.
4 Pilot to keep pilot boats, &c.
5. Commissioners to establish fees of pilots, &c.
6. Penalty for negligence or unskilfulness.
7. When master may pilot his own vessel, &c.
8 Commissioners authorized to remove pilots upon complaint.
9. When consignees liable for pilotage.
10. When fines, penalties, &c., recovered.
11. When pilot carried out to sea; compensation.
12. Commissioners' compensation; how allowed, and by whom paid.
13. Acts repealed.
14. When act to take effect.

Board of commissioners.

Pilot.

Deputies.

Vacancies.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the governor of this territory, John W. Couch and Nathaniel Crosby, shall constitute a board of commissioners for the purpose of examining candidates for the pilotage of the Columbia river, and appoint one or more suitable persons to be pilots on the bar of the Columbia; and also one or more pilots on the Columbia river to the head of navigation on that and the Willamette rivers, giving each of said pilots a branch or warrant for the execution of his office, with an authority to appoint deputies in the cases to be specified in such branch or warrant: *Provided*, Each pilot shall report his said deputies for the approbation of the said board of commissioners: *Provided also*, That whenever there shall occur a vacancy in such board of commissioners, such vacancy shall be filled by an appointment made by a majority of their own body.

Bond of pilots.

SEC. 2. Every such pilot and deputy shall, before entering upon the duties of his or their office, give bond, with sufficient security, to the said board of commissioners, in the sum of five thousand dollars, for the faithful performance of his or their duties in office.

Duty of.

SEC. 3. Every such branch pilot is authorized and directed, by himself or his deputy, to take charge of any vessel bound into the Columbia river, except vessels of less than twenty-five tons burden, engaged in the coasting trade of the territory of Oregon; said pilot first showing his branch or warrant to the master of any such vessel, if required; the authority to take charge having effect upon the presentation of such branch or warrant.

Cruising boats.

SEC. 4. The pilot or pilots shall always keep such boat or boats to cruise outside the bar, as may be approved as suitable by the power granting such branch or warrant.

Commissioners to fix fees.

SEC. 5. The said board of commissioners are authorized to determine the fees of pilotage of the pilot or pilots by them appointed, and to specify the same in their respective warrants; and to direct and authorize all arrangements and operations that may be necessary to facilitate the navigation of the Columbia river.

Liability of pilots.

SEC. 6. If any vessel, while under the charge of a branch or warrant pilot or his deputy, shall be lost or run aground, or sustain any damage through the negligence or unskilfulness of such pilot or deputy, such pilot shall be liable both for himself and his deputy, to pay all damages sustained by any person interested in such vessel or her cargo; and may, moreover, be removed from his office.

When master may pilot his vessel.

SEC. 7. Any master of a vessel who may choose to pilot his own vessel from outside the Columbia river bar to Baker's bay, across said bar, shall be permitted so to do; but he shall, notwithstanding, when bound into the river, pay to such pilot as shall first offer his services outside of Cape Disappointment, or outside of Point Adams, full pilotage, according to the fees specified in his warrant.

Commissioner may remove pilots.

SEC. 8. The said board of commissioners are authorized to hear and determine all complaints exhibited against the pilots appointed by them as aforesaid, and their deputies, and to suspend or remove them, and appoint others in their place.

Consignees when liable for pilotage

SEC. 9. Should any ship master omit or refuse to pay the pilotage fees in any instance, when by this law he has become liable, then his consignees shall become liable for the same.

Penalties, &c., where tried.

SEC. 10. That all penalties, forfeitures and complaints incurred under this act, shall be tried and determined in any court of record having cognizance of the same.

Compensation if pilot carried off.

SEC. 11. That if a pilot, acting under the provisions of this act, shall have boarded any vessel outward bound, and shall be detained on board said vessel, and carried out to sea, or to any foreign port, the officers of such vessel so detaining said pilot, shall be liable to pay the pilot so detained, a compensation equal to the pay of the highest officer on board of said vessel, for all the time he shall be so detained from his proper post.

Compensation of commissioners.

SEC. 12. The said board of commissioners hereby created, shall be entitled to receive a reasonable and just compensation for their services, for the time necessarily spent in the performance of the duties assigned to them by this act, not exceeding five dollars each per day; to be paid out of the treasury of the territory, upon a warrant of the auditor, who is hereby required to audit and allow the same.

Certain acts repealed

SEC. 13. All acts or parts of acts in any manner conflicting with the provisions of this, are hereby repealed.

Act, when to take effect.

SEC. 14. This act to take effect and be in force from and after its passage.

*Passed September 19th, 1849.*

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## *AN ACT* FIXING THE RATE OF TOLL FOR GRINDING.

SEC. 1. One-eighth of wheat, rye or other grain, ground and bolted; one-tenth, if ground or chopped only; one-seventh of Indian corn.
2. Liability and duty of millers
3. Frauds punished by fine, for use of schools.
4. Millers exempt from building bridges, but required to give notice to supervisor before digging race, or supervisor empowered to fill up the race.

Rate of tolls.

SECTION 1. *Be it enacted by the Legislative Assembly of the Terri-*

*tory of Oregon*, That the owner or occupier of any grist mills within this territory, shall be entitled to one-eighth part of all wheat, rye or other grain, ground and bolted; and one-tenth part of all rye, malt, buckwheat or other grains, ground or chopped only; and the one-seventh part of all Indian corn ground in said mill.

**Liability and duty of millers.** SEC. 2. That the owner or occupier of every mill aforesaid, shall be accountable for the safe keeping of all grains received in said mill, for the purpose of being ground therein, and shall deliver the same when ground and bolted, (as the case may be,) with the bag or bags, cask or casks, which were delivered in said mill with the grain, to the owner when called for: *Provided*, That the bag or bags, cask or casks left as aforesaid, be distinctly marked with the name, mark or brand of the owner or owners thereof: *Provided, also*, That nothing in this act shall be so construed as to charge or make accountable any owner or occupier of any mill, for the loss of any grain, bag or bags, cask or casks, which shall happen by robbery, fire or other accident, without the fault or neglect of such owner or occupier, or that of any other miller employed by such owner or occupier.

**Frauds, how punished.** SEC. 3. That if the owner or occupier of any mill, their representative, agent or miller, shall take a greater proportionate quantity of toll than is hereinbefore authorized, and be duly convicted thereof before any court having jurisdiction of the same, shall be fined for every such offence in any sum not exceeding fifty dollars, at the discretion of the court, for the use of the common school fund of the county; and shall, moreover, be liable at the suit of the person injured for damages.

**Exemption of millers.** SEC. 4. That any person or persons having right to a water privilege, shall not be required to construct or keep in repair a bridge or bridges, across any race conveying water to or from his or their mill on any road or roads: **Proviso.** *Provided*, That the person or persons executing or constructing such race or water-course shall, in all cases, give at least thirty days' notice to the supervisor or overseer of roads having jurisdictions of the same; and on neglect to give such notice, said supervisor or overseer of roads shall have power to fill up or demolish such excavation or construction, at the cost of the person or persons making them.

*Passed the Council, January 1st*, 1851.
*Passed the House of Representatives, January 9th*, 1851.

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## *AN ACT* TO PROVIDE FOR THE SELECTION OF PLACES FOR LOCATION AND ERECTION OF THE PUBLIC BUILDINGS OF THE TERITORY OF OREGON.

SEC. 1. Seat of government established at Salem.
2. Penitentiary at Portland.
3 University at Marysville
4. Commissioners appointed; their duty; bond required by acting commissioner.
5. Duty of acting commissioner; compensation to be hereafter allowed by law
6. To report to the Assembly, annually, account of moneys.
7. Vacancy to be filled by governor, until the next session of Assembly.
8. Penitentiary for one hundred convicts
9. Commissioners appointed; powers defined.
10. Act in force from its passage.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the seat of government of this territory be, and hereby is established and located at Salem, in the county of Marion; and each and every session, either general or special, of the Legislative Assembly of this territory, hereafter convened, shall be held at the said place above named. Seat of government.

SEC. 2. The penitentiary, or state or territorial prison of this territory, shall be, and hereby is located and established at Portland, in the county of Washington. Penitentiary at Portland.

SEC. 3. That the university shall be, and hereby is located and established at Marysville, in the county of Benton; and all appropriations or donations of money or personal property, and all the proceeds of the sale of land or lands, granted or donated to this territory for the establishment and endowment of a university, shall be applied to the erection of suitable buildings for an endowment of a university at the said place above named. University at Marysville.

SEC. 4. That John Force, H. M. Waller and R. C. Geer, be, and are hereby constituted a board of commissioners, to superintend the erection of buildings, at the place designated in the first section of this act, as the seat of government; and the said commissioners, or a majority of them, shall agree upon a plan of said buildings, and shall issue proposals, giving two months' notice thereof, and contract for the erection of said buildings without delay; and the said commissioners shall agree upon one of their number to be acting commissioner; and said acting commissioner shall give bond to the United States in the sum of twenty thousand dollars, to be approved by the governor of this territory, for the faithful performance of his duty; and said bond shall be filed in the office of the secretary of this territory. Commissioners

SEC. 5. It shall be the duty of said acting commissioner to superintend, in person, the rearing and finishing said buildings; and the said acting commissioner shall have power to call the said board of commissioners together, for the purpose of transacting business on this subject; and the said commissioners shall receive such compensation as shall be hereafter allowed by law. Duty of acting commissioner.

SEC. 6. The acting commissioner shall annually report to the Legislative Assembly, a true account of all moneys received and paid out by him. Ib His report.

SEC. 7. If by death, resignation, or any other cause, there shall be a vacancy in said board of commissioners, it shall be the duty of the governor to appoint some person from the district where such vacancy occurred, to perform the duties of such disqualified commissioner: *Provided*, *however*, That such appointment shall not extend beyond the meeting of the next Legislative Assembly. Vacancies, how filled.

SEC. 8. *And be it further enacted*, That a penitentiary of sufficient capacity to receive, secure and employ one hundred convicts, to be confined in separate cells at night, shall be erected at the place designated in the second section of this act, for the confinement and employment of persons sentenced to imprisonment and hard labor in the penitentiary in this territory.

Commissioners, their powers

SEC. 9. That Daniel H. Lownsdale, Hugh D. O'Bryant and Lucius B. Hastings, be, and are hereby constituted a board of commissioners, to superintend the erection of a penitentiary, at the place designated in the second section of this act, and shall be governed by, and have all the powers, and be subject to all the restrictions contained in sections, four, five, six and seven of this act, and receive such compensation as may hereafter be allowed by law.

Act in force from its passage.

SEC. 10. This act to take effect and be in force from and after its passage.

*Passed the House of Representatives, January 30th, 1851.*
*Passed the Council, February 1st, 1851.*

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## *AN ACT* TO AMEND AN ACT TO PROVIDE FOR THE SELECTION OF PLACES FOR LOCATION AND ERECTION OF THE PUBLIC BUILDINGS OF THE TERRITORY OF OREGON.

SEC. 1. Commissioners appointed, constituted a board; each commissioner to give bond; by whom approved; amount thereof; its condition; his oath, when filed. President of said board chosen; his duties and powers, of a quorum for business.
2. Of the first meeting of said board, and proceedings thereat; of publication of notice to receive proposals, and of letting contracts. Bond to be taken of bidders; conditions thereof. If but one bid, proceedings thereon. Duties of president as soon as qualified. Of the payment of money, and orders therefor, drafts for the same; on whom drawn.
3. The governor made treasurer of the fund appropriated, &c.; his duties
4. Compensation of commissioners.
5. Certain sections of former act repealed.
6. Act, when to take effect.

Commissioners.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That Eli M. Barnum, Albert W. Ferguson and Alvis Kimsey, be, and they are hereby constituted and appointed a board of commissioners to erect suitable public buildings at the seat of government of this territory. Each of said commissioners shall enter into bond with good and sufficient sureties to the governor, to be approved by him, in the sum of ten thousand dollars, conditioned for the faithful performance of his duty as such commissioner according to law, and also, to take an oath faithfully and impartially to perform his duties, which shall be filed in the office of the secretary of the territory. The said Eli M. Barnum shall be the president of said board, and preside at all meetings thereof; keep accurate minutes of its proceedings, entering all votes, resolutions and orders of said board; enter into all contracts or agreements authorized to be entered into by the board, and see that they are faithfully executed according to the terms thereof; and do and perform such other duties as shall be assigned him by said board, compatible with his office; and the president may call meetings of said board as often as he shall deem necessary for the transaction of business, giving reasonable notice thereof to the other members, one of whom, with the president, shall form a quorum for business.

Bond.

President of board.

Quorum.

First meeting

SEC. 2. The first meeting of said board shall be held in the town of Salem, at such time as the president of the board shall appoint, at which first meeting they may adopt such rules and regulations for the government of their proceedings, and adjourn from time to time, as they may deem expedient, and proceed to contract for labor and materials necessary to erect said buildings [upon] the site selected by the commissioners named in the act to which this is an amendment, upon such plan and of such materials as they shall agree upon, by giving notice by publication in some newspaper of the territory, for eight successive weeks, that they will receive sealed proposals for the furnishing of the materials, or performance of the work, specified in the notice; and when said commissioners shall let any contract or contracts, they shall let the same to the lowest responsible bidder, in all cases taking bonds, with approved security, for the faithful performance of such contract; and if there shall be but one bidder, the consent of all the commissioners shall be required to enter into contract: *Provided*, That the said president shall, as soon after he shall be qualified, in accordance with the provisions of this act, as practicable, demand and receive from the former commissioners, all books and papers connected with the business of their office; and all acts, contracts and proceedings of the former commissioners, shall be observed by the board hereby constituted, and they shall proceed to execute and complete the same, unless they shall deem that the interest of the territory require that they shall be altered, changed or set aside. When any money shall become due on any contract or for any labor or material performed or furnished for said buildings, the said board shall, if they consider that the same ought to be paid, make an order that the same be allowed and paid, after which order, the president shall draw a draft on the governor for the amount so allowed, in favor of the person to whom such allowance was made, and take the receipt of such person therefor.

Publication for proposals.

Contractor, his bond.

Proviso.

Payment, orders for money

SEC. 3. The governor of this territory is hereby declared to be the treasurer of the fund appropriated by the Congress of the United States, to be applied to the erection of suitable public buildings at the seat of government, and shall apply for and receive all moneys that are now and may hereafter be appropriated, as aforesaid, for the erection of said public buildings, and pay the same on drafts drawn on him by the president of said board, as aforesaid, and annually report to the Legislative Assembly the amount of money so paid.

Governor treasurer.

SEC. 4. Said commissioners shall each receive the sum of five dollars per day, for each and every day necessarily employed in attending to the duties of this appointment.

Compensation of commissioners.

SEC. 5. That sections four, five and six, of the act to which this is an amendment, be, and the same are hereby repealed.

Certain sections of former act repealed

SEC. 6. This act to take effect and be in force from and after its passage.

Act, when to take effect.

*Passed the Council, January 21st*, 1853.
*Passed the House of Representatives, January 22d*, 1853.

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*Resolved by the Legislative Assembly of the Territory of Oregon*, That the commissioners elected to superintend the erection of public

Buildings, how to be completed.

buildings at the seat of government, be, and they are hereby directed to complete the erection of said buildings, in the manner as specified in the diagram and drawings accompanying the report of said commissioners, with the exception of using wood instead of stone for the outer walls of the same, and that the style of architecture shall be that of the Grecian Doric, instead of the "Ionic," as proposed by said commissioners.

*Passed January 30th*, 1854.

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## *AN ACT* TO RELOCATE THE SEAT OF GOVERNMENT OF THE TERRITORY OF OREGON.

SEC. 1. Seat of government at Corvallis.
2 Board of commissioners appointed; who president; their duties.
3. Repeal of other conflicting enactments.
4. Act, when to take effect.

Seat of government.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the seat of government of this territory be, and hereby is relocated, and established at Corvallis, in the county of Benton, and each and every session of the Legislative Assembly, either general or special, of this territory, hereafter convened, shall be held at the said place above named.

Who commissioners

SEC. 2. That B. R. Biddle, J. S. McIteeny and Frederick Waymire be, and they are hereby constituted and appointed a board of commissioners to erect suitable public buildings at the seat of government, on such site in the said town of Corvallis, in Benton county, as the said commissioners shall select and obtain for that purpose. The said B. R. Biddle shall be the president of said board, and preside at all the meetings thereof; and the said commissioners shall give bond and qualify in the same manner, and perform all the duties and may exercise and perform all the powers, that the commissioners were required to do, and authorized to exercise and perform, by an act entitled "An act to amend an act to provide for the selection of places for the location and erection of the public buildings of the territory of Oregon," that passed the Council January the 21st, 1853, so far as the same is consistent with the provisions of this act.

Who president of board

Repeal of conflicting acts

SEC. 3. That such parts of the above named act, and the act to which this is an amendment, as conflict with the provisions of this act, are hereby repealed.

Act, when to take effect.

SEC. 4. This act shall take effect and be in force from and after the first day of March next.

*Passed January 16th*, 1855.

## *AN ACT* AUTHORIZING COUNTY COMMISSIONERS TO LOCATE LAND FOR THE BENEFIT OF COUNTY SEATS.

SEC. 1. County commissioners to locate land for county seats; number of acres; report, to whom made.
2. When act to take effect.

Location of county seats, &c.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That the county commissioners in each county in this territory, be, and are hereby authorized to locate one quarter section of land in their respective counties, for the benefit of county seats, in accordance with an act of Congress, passed May 26, 1824, and report the same to the office of surveyor-general.

SEC. 2. This act shall take effect and be in force from and after its passage.

*Passed the House of Representatives, January 29th,* 1853.
*Passed the Council, January 31st,* 1853.

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## *AN ACT* TO CREATE A BOARD OF COMMISSIONERS TO ERECT THE TERRITORIAL UNIVERSITY, AND TO DEFINE THEIR DUTIES

SEC. 1. Commissioners chosen; university, where erected; proviso
2. Required to give bond, amount thereof, by whom approved and when filed.
3 Place and time for first meeting of board; power to adjourn, majority a quorum; when to elect acting commissioner; his power and duties, no member to be interested in contract, under penalty, how collected.
4. Board to elect one of their number secretary, his duties, journals, by whom signed, general powers of the board; secretary to subscribe an oath; nature of, and where filed.
5. Of the duties of said board.
6. Acts of acting commissioners to be under the control of the board; conditions precedent to contract being entered into; proviso.
7. Vacancies, how filled, how such appointees to qualify, and their term of office
8 Of allowances for services, &c, by the board, of orders therefor, on whom drawn, by whom signed and attested, their nature, by whom paid.
9. When board to draw orders, and secretary to attest them, for what sum; conditions precedent to payment of moneys by treasurer; when board to sanction payments.
10 Further powers of said board.
11. Duty of board to report to Legislative Assembly, annually, nature thereof.
12 Of their compensation.
13. When act to take effect.

Commissioners.

University where erected.

Proviso.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That James A. Bennett, John Trapp and Lucius W. Phelps, be, and they are hereby appointed and constituted a board of commissioners, for the construction of the territorial university, at the town of Marysville, in the county of Benton, on such land as shall be donated for that purpose by Joseph P. Friedly: *Provided,* That if, in the opinion of said commissioners, other lands, which can be obtained at or near said town of Marysville, afford a more eligible site, they may accept such other lands, and the said university shall be erected thereon.

Bond of commissioners.

SEC. 2. Each of said commissioners, before entering upon the duties herein assigned, shall enter into bonds, with good and sufficient security, to be approved by the governor, in the penal sum of ten thousand dollars, conditioned for the faithful performance of his duties according to law, which bond shall be filed with the auditor of this territory.

Meeting of commissioners.

SEC. 3. The first meeting of said commissioners shall be in the town of Marysville, on the first Monday of May next, or so soon thereafter as said commissioners shall agree; and they may adjourn from time to time, as they shall deem necessary; a majority of whom shall constitute a quorum for business. At said first meeting they shall elect one of their number to be acting commissioner, who shall be president of said board, and have the casting vote on all questions before the board when there shall be a tie, and whose duty it shall be to enter into and superintend the performance of all contracts for labor and materials which may have been authorized by the board, to see the terms of the contract are fulfilled, and to do and perform such other business pertaining to the erection of said university buildings, as the board may direct; and the said acting commissioner is authorized to call meetings of the members of said board, as often as he shall deem necessary for the transaction of business: *Provided*, That no member of the board shall be directly or indirectly interested in any contract connected with the erection of said university buildings, under the penalty of forfeiting the full amount of the contract, to be prosecuted and collected of him and his sureties, by the treasurer of this territory.

Acting commissioner

Commissioners not to be interested in contract.

Secretary.

SEC. 4. The said commissioners shall also, at their first meeting, elect one of their number a secretary of said board, who shall keep a true and correct journal of the proceedings of the board, entering all the votes on the journal, and recording the names of the members voting for and against all questions which may be submitted to the decision of said board. The journal of each and every meeting of the board shall be signed by the president and attested by the secretary. The board may assign such other duties to the secretary, compatible with his office, as they may deem proper; and they may adopt such rules for the government of the proceedings of the board, during the meetings thereof, as may be deemed advisable, and not incompatible with the provisions of this act. Said secretary shall, before entering upon the duties of his office, take and subscribe an oath, before some person authorized to administer oaths, that he will faithfully and impartially perform the duties of his office, according to law and the best of his ability; which oath shall be certified by the officer administering the same, and filed with the auditor of the territory.

Journal.

Powers of board.

Oath of secretary.

Duties of board.

SEC. 5. At the first meeting of said board of commissioners, or as soon thereafter as practicable, the necessary steps shall be taken, and measures adopted in accordance with the provisions of the first section of this act, to procure a suitable site upon which to erect said university buildings, and for the commencement and completion of said buildings, upon such plan and of such materials, in such style and of such size and extent, as said commissioners or a majority of them shall agree upon.

Acts of commissioner under control of board.

SEC. 6. All contracts and other acts of the acting commissioner, shall be under the supervision and control of said board, and no contract shall be entered into for material or labor for the erection of said buildings, until approved by the said board, or a majority;

nor until the said board shall have first given notice, by publication in one or more newspapers printed in the territory, for three successive weeks, inviting sealed proposals for the performance of the labor and furnishing of the materials for the fulfilment of the proposed contract, and specify the character of the bond that will be required for the fulfilment of the contract; and in all cases contracts shall be given by the board to the lowest and best responsible bidder, who will give the security required: *Provided*, That where there shall be but one bidder, the approval of every member of the board shall be required to complete the proposed contract. Proviso.

SEC. 7. Should a vacancy occur in said board of commissioners, by death, resignation, failure to qualify or otherwise, the governor shall appoint a person to fill said vacancy, and the person so appointed shall qualify according to the provisions of this act, and enter upon the duties of a commissioner as herein prescribed: *Provided*, That such appointment shall not extend beyond the next meeting of the Legislative Assembly. Vacancies

SEC. 8. When, by any contract with said commissioners, any sum or sums of money shall become due to any person or persons, for services or materials furnished for said building, said board may allow and make an order that such sum or sums of money be paid. After such allowance and the making of such order, the president shall draw his warrant on the treasurer, or other officer or person having lawfully in his possession any money or moneys authorized by law to be applied to the establishment and endowment of the university, which warrant shall be signed by the president, and attested by the secretary, requesting said treasurer or other officer or person to pay said contractor, workman or other person, the amount he shall have been allowed on such contract, for work or materials by said board; and the said treasurer or other person is hereby authorized and required to pay such sum or sums as said warrant was drawn for, out of any moneys in his hand, authorized by law to be applied to the establishment of the university. Allowances for services.

SEC. 9. No warrant shall be drawn by said acting commissioner, nor attested by the secretary, unless a previous order shall have been made by said board, and entered upon the journals kept by the secretary, nor for an amount greater than said order; nor shall the treasurer or other person pay, or cause to be paid, money or moneys authorized by law to be applied to the purposes aforesaid, for any purposes, unless upon a warrant ordered by the board, and signed by the president and attested by the secretary; and the board shall in no case sanction the payment, unless satisfied that the labor has been performed, or the materials furnished, in accordance with the contract entered into under the provisions of this act, for which any such payment is contemplated. Secretary, when to attest orders Payment thereof. Sanction of payment.

SEC. 10. The board of commissioners hereby constituted, are hereby authorized and empowered to receive and appropriate to the erection of the said university buildings, any and all such sums of money, lands or other property, as shall be given, granted, donated or bequeathed by any person or persons, or body corporate, to aid or assist in the erection of the said buildings, and to Further powers of board apply the same in accordance with the condition of the gift, grant, donation or bequest.

Report of commissioners.

SEC. 11. The said commissioners shall report to the Legislative Assembly, at each regular session thereof, an account of all moneys received and expended, and from what source received, to what particular purpose applied, and what amount remains on hand unexpended, and what amount they have allowed and made orders for payment; what contracts they have let, and what have been performed; and also suggest such matters as they shall deem proper in regard to said university.

Compensation.

SEC. 12. The said commissioners shall receive such compensation as shall be hereafter allowed by law.

Act, when to take effect.

SEC. 13. This act to take effect and be in force from and after its passage.

*Passed the House of Representatives, January 18th*, 1853.
*Passed the Council, January 20th*, 1853.

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## *AN ACT* TO RELOCATE THE TERRITORIAL UNIVERSITY OF THE TERRITORY OF OREGON.

SEC 1. University, where to be relocated, its erection and endowment.
2. Appointment of commissioners; their duties and liabilities.
3. Act, when to take effect.

Where located.

Endowments, how applied.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the territorial university be and hereby is relocated and established at Jacksonville, in the county of Jackson, and all the proceeds of the sales of land or lands granted, or donated to this territory for the establishment and endowment of a university, shall be applied to the erection of suitable buildings for, and the endowment of a university at the said place above named.

Commissioners, their duties

Ib. Bond.

Repeal of parts of prior act.

SEC. 2. That Richard Dugan, W. W. Fowler and Geo. H. Ambrose, be, and they are hereby appointed and constituted a board of commissioners for the construction of the territorial university, on such site as the said commissioners shall select and obtain for that purpose, in or near the said town of Jacksonville; and the said commissioners shall give bonds and qualify in the same manner, and perform all the duties, and be subject to the same restrictions and penalties, and may exercise and perform all the powers that the commissioners were required to do, were subject to, and authorized to exercise and perform, by an act entitled "An act to create a board of commmissioners to erect the territorial university, and to define their duties," that passed the council, January 20, 1853, so far as the same is consistent with the provisions of this act.

When to take effect.

SEC. 3. This act shall take effect and be in force from and after the first day of March next.

*Passed January 23d*, 1855.

## *AN ACT* TO PROVIDE FOR THE SELECTION AND LOCATION OF TWO TOWNSHIPS OF LAND, TO AID IN THE ESTABLISHMENT OF A UNIVERSITY.

SEC. 1. Commissioners appointed to select and locate two townships of land to aid in the establishment of a university.
2. Said commissioners to be sworn, and to inform surveyor-general of the tract or tracts selected.
3 Commissioners to report a schedule of lands selected by them to the Legislative Assembly.
4. Their compensation.
5. Provision for filling vacancies occuring in board of commissioners
6. When act to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That Harrison Linville, Sidney Ford and Jesse Applegate, be, and the same are hereby constituted a board of commissioners to select and locate two townships of land in accordance with the provisions of the tenth section of an act of Congress, entitled "an act creating the office of surveyor-general of the public lands in Oregon, and to provide for the survey, and to make donations to the settlers of the said public lands." Commissioner

SEC. 2. And said commissioners, after being duly sworn faithfully to discharge their duties as said commissioners, shall proceed, as soon as practicable, to select and locate said lands, either by alloting special districts of territory to each member of the board, or in such other manner as said commissioners shall decide; and they shall inform the surveyor-general of the precise tract or tracts so selected or located. Oath, to inform surveyor-general, &c.

SEC. 3. Said commissioners shall report and present a schedule of the sections or tracts selected by them, and approved by the surveyor-general, to the Legislative Assembly of Oregon, at their next annual session. Report, a schedule, &c.

SEC. 4. Each of said commissioners shall be allowed, out of the treasury of the territory, from moneys not otherwise appropriated, five dollars for each and every day actually employed in performance of the duties of their office. Compensation

SEC. 5. That when any vacancy shall occur in said board of commissioners, either by death, refusal to act, or otherwise, the remaining commissioner or commissioners shall fill such vacancy. Vacancies

SEC. 6. This act to take effect and be in force from and after its passage. When act to take effect.

*Passed the House of Representatives, December* 12*th*, 1851.
*Passed the Council, December* 17*th*, 1851.

## *AN ACT* CREATING THE OFFICE OF COMMISSIONER TO CONTROL, PROTECT AND SELL THE PUBLIC LANDS DONATED BY CONGRESS TO THE TERRITORY OF OREGON, FOR THE ESTABLISHMENT AND ENDOWMENT OF A UNIVERSITY, AND TO DEFINE HIS POWERS AND DUTIES.

SEC 1. University land commissioner to be elected; his term of office.
2. Powers of such commissioner
3. Commissioner to sue for recovery of damages done to lands.
4. Commissioner to be a witness.
5. Commissioner to appraise value of improvements made upon university lands, and value of land exclusive of improvements; to keep a record of appraisements; improvements made after the passage of this act not to be appraised.
6. Persons claiming right to said lands, to pay commissioner their appraised value, or give bond, &c.
7. Oregon city claim to be sold at public auction.
8. Commissioner to be sworn; to give bond; to report to the Legislative Assembly.
9. Compensation of commissioner.
10. Notice of sale to be given in some newspaper; lots enumerated in acts of the Legislative Assembly, of January 29th and February 5th, 1851, not included in this act, block one hundred and eleven likewise not included.
11. When act to take effect.

Election of commissioner.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That there shall be elected by the said Assembly, on joint vote of both houses, a commissioner, whose title shall be the university land commissioner, whose term of office shall be two years from and after the first day of February ensuing his election, and until his successor shall be elected and qualified.

His powers.

SEC. 2. Said commissioner shall have full power and control over all lands, and the proceeds thereof, donated by Congress to this territory for the establishment and endowment of a university; and, for all purposes connected therewith, may sue and be sued in his official capacity, in any court of competent jurisdiction.

May sue for damages to lands.

SEC. 3. In case there shall have been, or may hereafter be, any trespass committed upon, or other injury done to any of said lands, or any part or parcel thereof shall have been, or may hereafter be, unlawfully entered upon and detained, or unlawfully detained by any person or persons, it shall be the duty of the land commissioner to bring the proper suit for the recovery thereof in his official capacity, except as hereinafter provided.

May be a witness.

SEC. 4. In any suit by or against said commissioner in his official capacity, he shall be deemed a competent witness for either party, notwithstanding his being a party to the record.

Appraisements by, &c.

SEC. 5. In all cases when improvements have been made upon said lands by any person or persons, under color of any right or authority, it shall be the duty of said commissioner, as soon as may be, to appraise such improvements at their present actual value; and also to appraise, in like manner, the lot or land exclusive of improvements, and to keep a record of any such appraisement: *Provided,* That no appraisement shall be made of any improvements commenced after the passage of this act.

**Payment of appraisement, &c.**

SEC. 6. In case any person or persons claiming right to any of said land so appraised, his, her or their legal representatives, shall pay to said commissioner the appraised value of said lands, or shall give a bond to said commissioner and his successors in office, with security to be approved of by said commissioner, on interest at seven per cent. for the amount of such appraised value, payable within one year from the date of such bond, and execute to said commissioner and his successors in office a mortgage on said lands, to secure the payment on said bond; it shall be the duty of said commissioner to execute, in due form of law, and deliver to such person or persons, a deed in fee simple of such lot or parcel of land.

**Oregon city claim, how sold**

SEC. 7. That all of said lands so donated by Congress for the purpose above stated, known as the Oregon city claim, not disposed of as above directed, shall be sold at public auction by said commissioner, to the highest bidder, at such time or times and place or places as he may designate; the purchase money to be paid or secured, and deed given as prescribed in the preceding section.

**Oath of commissioner**

SEC. 8. Before said commissioner shall enter upon the duties of his office, he shall take an oath to support the constitution of the United States, and faithfully to discharge the duties of his office—which oath shall be administered by the speaker of the House of Representatives, or president of the council, or a judge of the Supreme Court; and shall give a bond with one or more securities, to be approved of by such speaker, president, judge, or by the territorial auditor, in the penal sum of ten thousand dollars, payable to the territory of Oregon, conditioned for the faithful discharge of his duties as such commissioner, and faithfully to account for and pay over all moneys, and securities for the payment of moneys, which may come to his hands by virtue of his office, to the territorial treasurer, quarterly, and make a report of all his acts, as said commissioner, to the Legislative Assembly, at the regular session thereof—which bond shall be filed with, and kept by, the territorial auditor, and suit may be brought at any time for a breach of any of the conditions thereof.

**Bond.**

**Report**

**Compensation of**

SEC. 9. Such commissioner shall receive for his services the sum of five dollars per day for each and every day necessarily employed in and about the business pertaining to his office, to be audited and allowed by the territorial auditor, and paid out of any moneys in the territorial treasury; and expenses other than the ordinary expenses of said commissioner, to be audited and allowed by the Legislative Assembly, to such amount as, under the circumstances, may be just and equitable.

**Sale, notice of, &c.**

SEC. 10. Before said commissioner shall sell any of said lands at auction, as above provided, he shall give notice thereof, and of the time and place of sale, by publication in one of the newspapers published in this territory, once in each week for at least four weeks: *Provided, however*, That this act shall not be so construed or so executed as to include for the time being, such lots or parts of lots as are enumerated in an act of the Legislative Assembly of Oregon territory, entitled an act to confirm the title to certain lots in Oregon city, passed January 29th, A. D. 1851, and in an act

**Proviso.**

passed February 5th, 1851, entitled an act supplemental to an act to provide for confirming the title to certain lots in Oregon city, to the persons therein named, in said acts as passed as aforesaid; and also, the entire block, number one hundred and eleven [111] in said town of Oregon city, in the territory aforesaid, on which said block stands the court-house of Clackamas county in said territory.

Act, when to take effect. SEC. 11. This act to take effect and be in force from and after its passage.

*Passed the Council, January 16th,* 1852.
*Passed the House of Representatives, January 20th,* 1852.

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## AN ACT SUPPLEMENTAL TO THE "ACT CREATING THE OFFICE OF COMMISSIONER TO CONTROL, PROTECT AND SELL THE PUBLIC LANDS DONATED BY CONGRESS TO THE TERRITORY OF OREGON, FOR THE ESTABLISHMENT AND ENDOWMENT OF A UNIVERSITY, AND TO DEFINE HIS POWERS AND DUTIES."

SEC. 1 Commissioner, when to fix mininum price of university land.
2. Mortgages taken as security, how to be deposited, their validity; deeds to purchasers need not be acknowledged by commissioners before an officer.
3. When commissioner may employ counsel.
4. Ib.; to locate land equivalent to the two townships donated by Congress to university
5. Conflicting acts repealed.
6 Act, when to take effect

Minimum price. SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon,* That in all future sales of university lands for this territory, the commissioner shall fix the minimum price at four dollars per acre.

Mortgages, how deposited. SEC. 2. That all mortgages taken to secure deferred payments upon sales of university lands, which have been or shall be hereafter deposited, as provided for in the act to which this is supplemental, with the territorial treasurer, shall have the like validity and effect as though the same had been recorded in the records of mortgages in the several counties where the lands may be located: Deeds to purchasers, how acknowledged. *Provided,* That in making deeds to purchasers of university lands hereafter, it shall not be necessary for the commissioner to have the acknowledgment of the same taken by an officer, as provided by the laws of this territory in other cases of conveyances, but the deeds executed by said commissioner shall be of like validity as though an acknowledgment had been taken.

Commissioners may employ counsel SEC. 3. That if it shall become necessary, in the settlement of disputes in regard to the Oregon city claim, to engage the services of counsel, the commissioner shall procure the aid of competent counsel, who shall receive a reasonable compensation for such services, to be allowed by the Legislative Assembly.

Locations SEC. 4. That the university land commissioner shall, as speedily as practicable, proceed to select and locate a sufficient quantity of land, to make the full amount of the two townships donated by Congress to the territory of Oregon for university purposes, in accordance with the laws of Congress and this territory, and make return of the same to the proper officer for approval: *Provided*, That the selections and locations heretofore made, in accordance with the laws of this territory, and approved by the surveyor-general or other proper officer, be, and the same are hereby approved and confirmed.

Repeal of certain acts.

SEC. 5. That all acts or parts of acts, inconsistent with this act, be, and the same are hereby repealed.

When to take effect.

SEC. 6. This act to take effect and be in force from and after its passage.

*Passed January 30th*, 1855.

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## *AN ACT* TO AUTHORIZE AND EMPOWER THE UNIVERSITY LAND COMMISSIONER TO CONVEY CERTAIN LANDS AND LOTS IN THE OREGON CITY CLAIM IN CLACKAMAS COUNTY.

SEC. 1. University land commissioners to convey certain land to board of commissioners of Clackamas; proviso
2. When money paid for lands and lots, to be refunded.
3. Act, when to take effect.

Conveyance of land to commissioners of Clackamas.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the university land commissioner be, and he is hereby authorized, empowered and directed to convey and confirm to the board of commissioners of the county of Clackamas, all that certain piece, parcel and lot of land which was granted to Samuel S. White, Joseph Jeffers and Israel Mitchell, judges of probate of the aforesaid county, July 2d, 1850, by Dr. John McLaughlin, for the use and benefit of said county: *Provided*, the said board of commissioners shall pay to the said university land commissioner the sum of five dollars per acre therefor for all such lands so conveyed, and also convey and confirm to the purchaser or donee all lots in said Oregon city claim, sold or granted by Dr. John McLaughlin subsequent to the 4th day of March, 1849, and prior to the passage of the land law making donation to actual settlers, and for other purposes, passed by Congress, and approved 27th September, 1850: *Provided*, said purchaser or donee, or their assigns, shall pay to the said university land commissioner the sum of five dollars for each and every lot so conveyed.

What money to be refunded

SEC. 2. In the event that the Congress of the United States shall grant the prayer of the Legislative Assembly of the last session, praying said Congress to confirm to the said Dr. John McLaughlin the Oregon city claim, and authorizing the territory of Oregon to select other lands in lieu thereof for the benefit of said university, then and in that case, all moneys received for such lands or lots, shall be refunded out of the university fund to the person or persons praying the same.

When to take effect.

SEC. 3. This act shall take effect and be in force from and after its passage.

*Passed January 17th*, 1855.

### *AN ACT* TO AUTHORIZE UNIVERSITY COMMISSIONERS TO DISPOSE OF CERTAIN LAND.

SEC. 1. Commissioner to sell materials for building university in Benton county
2. Ib. to give notice of sale.
3. Terms of sale.
4. Note of purchaser, security and interest thereon.
5. Note of purchaser, how and where deposited.
6. Act, when to take effect

Sale of building materials

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the university land commissioner be, and he is hereby authorized and directed to sell at public auction, within six months after the passage of this act, all the material or materials procured for the erection of a university at or near Corvallis, in Benton county, Oregon territory

Notice of sale.

SEC. 2. It shall be the duty of said commissioner, before proceeding to sell said material or materials, to publish, in the newspaper doing the territorial printing, a notice, setting forth the property to be sold, together with the terms of sale.

Terms of sale.

SEC. 3. The terms of sale shall be as follows: one-third in six months; one-third in nine months, and the remainder in twelve months after the day of sale.

Note of purchaser.

SEC. 4. Said commissioner is hereby required to take notes of each purchaser, with good and sufficient surety, bearing interest at the rate of ten per cent per annum from date.

Deposit of note.

SEC. 5. The commissioners shall deposit such notes with the territorial treasurer, in the same manner as he is by law required to account for and pay over all moneys or securities which may come into his hands by virtue of his office.

When to take effect.

SEC. 6. This act shall take effect and be in force from and after its passage.

*Passed January 30th*, 1855.

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### *AN ACT* TO AMEND AN ACT SUPPLEMENTARY TO AN ACT ENTITLED "AN ACT TO PROVIDE FOR THE SELECTION OF PLACES FOR THE LOCATION AND ERECTION OF THE PUBLIC BUILDINGS OF THE TERRITORY OF OREGON."

SEC. 1. Commissioners for construction of penitentiary, how chosen.
2. Oath of, when and how taken; to be indorsed on bond, amount of bond.
3 Commissioners, when and where to meet; election of president and secretary; their duties.
4. Governor to fill vacancies; person appointed to qualify
5. Duty of president; no member to be interested in any contract.
6 Governor treasurer of penitentiary fund.
7. Treasurer, when to pay moneys.
8 Commissioners, when and how to erect penitentiary.
9. Board to have supervision of contracts; contracts, to whom awarded.
10. Commissioners to appoint keeper and deputy keeper; duty of keeper to receive and keep convicts; salary, &c ; food of prisoners; how may be secured.
11. Salary of commissioners; commissioner to verify his accounts.
12. Report of commissioners, when to be made.
13. Certain laws, when repealed.
14. Act, when to take effect

SECTION 1. *Be it enacted by the Legislative Assembly of the Terri-*

Commissioners, how chosen

*tory of Oregon,* That the Legislature, in joint convention assembled, shall elect three competent persons, residents of Washington county, who are hereby constituted a board of commissioners for the construction of a penitentiary upon the site already selected at the city of Portland, and who shall continue in office for one year from the passage of this act, or until their successors are elected and qualified.

Oath.

SEC. 2. Each commissioner, before entering upon the duties of his office, shall take and subscribe an oath, to be certified on the back of his bond, before one of the judges of the Supreme Court, or a judge of probate, to support the constitution of the United States, and the provisions of the act of Congress organizing the territory of Oregon, and faithfully and impartially to perform the duties of his office according to law, to the best of his abilities, and shall enter into a bond to the governor of the territory, with two or more good and sufficient sureties, to be approved by said governor, in the sum of ten thousand dollars, conditioned for the faithful performance of his duties according to law, which oath and bond shall be filed in the office of the secretary of the territory.

Bond to be approved by governor

To meet at Portland, when.

SEC. 3. The persons elected under the provisions of the first section of this act, or a majority of them, shall meet at the said town of Portland, on the second Monday of February, 1854; and, after due organization by electing one of their number president of their board, and appointing one of the number secretary, they shall proceed to demand and recover from the late board of commissioners of the said penitentiary, all books, papers, moneys, rights, credits, effects and property belonging to said penitentiary, and the said board hereby constituted may adjourn from time to time, as they may deem necessary: *Provided,* That not more than six days in any one month shall be occupied in the meetings of said board.

Election of president and secretary.

Vacancies, how filled.

SEC. 4. Should a vacancy occur in said board of commissioners, by failure to qualify, death, resignation or otherwise, the governor of the territory is hereby empowered to appoint some suitable person, a resident of the territory, to fill such vacancy; and the person so appointed shall qualify according to the provisions of this act, and shall enter upon the duties assigned to his predecessor.

Duty of president.

SEC. 5. It shall be the duty of the president of the board to preside at the meetings thereof, and superintend the performance of all contracts for labor and material which may have been authorized by the board, to see that the terms of each contract are fulfilled, and to do and perform such other duties pertaining to the erection of said penitentiary as the board shall direct: *Provided,* that no member of the board shall be interested, directly or indirectly, in any contract of any kind connected with the erection of said penitentiary, during their continuance in office, under the penalty of five thousand dollars, to be prosecuted and collected of him and the sureties upon his official bond, upon an action of debt, under the direction of the governor of the territory.

Member not to be interested in a contract.

Treasurer of penitentiary fund.

SEC. 6. The governor of this territory is hereby declared to be the treasurer of the fund appropriated by the Congress of the United States, to be applied to the erection of a penitentiary; and shall make requisition for and receive from the proper officer of the United States treasury, any and all moneys that now are or may hereafter be appropriated for the erection of a penitentiary, and to keep the same in safety, being at all times prepared to pay the drafts of the board out of such funds as he shall receive by virtue of the provisions of this act.

Treasurer, when to pay moneys.

SEC. 7. No money shall be paid by the treasurer for any purposes, unless on a draft ordered by the board, and signed by the presiding commissioner, and attested by the secretary; and every such draft shall express upon its face, whether the amount so required is for materials furnished or services rendered, or labor performed: and the board shall in no case sanction the payment of any money, unless the labor has been performed or the materials have been furnished in accordance with a contract entered into under the provisions of this act, for which any such payment is contemplated.

When and how to erect penitentiary.

SEC. 8. The commissioners shall, after taking into their possession any and all materials, and contracts for materials and labor, proceed, with as little delay as possible, to erect a suitable building of stone or brick, proof against fire, and of suitable size and strength to safely and properly keep fifty convicts.

Board to have supervision of contracts.

SEC. 9. All the contracts and other acts of any acting commissioner shall be under the supervision and control of said board, and no contract shall be entered into for material or labor for the erection of said penitentiary, until approved by the said board, or a majority thereof, nor until the said board shall have first given notice, by publication in one or more newspapers printed in the territory, for three successive weeks, inviting sealed proposals for the performance of the labor and furnishing of the necessary materials for the fulfilment of the proposed contract, and specifying the character of the bond which will be required for the fulfilment of said contract; and in all cases contracts shall be given by the board to the lowest and best responsible bidder, who will give the security: *Provided*, That when there shall be but one bidder, the approval of every member of the board shall be requisite to complete the proposed contract.

Appointment of keeper and deputy keepers; their duties.

SEC. 10. The said commissioners are hereby authorized and required to appoint some suitable and discreet person to serve as keeper of the penitentiary, and such assistant keepers as they may deem necessary, whose duty it shall be to receive from the sheriffs of the several counties, all persons who are now under sentence, or may hereafter be sentenced to the penitentiary, and keep them safely, according to law; and the said sheriffs are hereby authorized and required to deliver such convicts safely to the said keeper at Portland, in the county of Washington, and take his receipt therefor, which shall fully acquit and discharge said sheriffs from all responsibility for the custody and safe keeping of such convicts; and it shall be lawful and is hereby made the duty of said commissioners to employ all convicts in the penitentiary, so far as they may deem it practicable, in the construction of the penitentiary. The said convicts, so far as respects their employment in the construction of the penitentiary, shall be under the control of said commissioners; and the said keeper shall receive the sum of six hundred dollars per annum, to be paid semi-annually out of the territorial treasury, on the order of the auditor of the territory; and the said keeper of the penitentiary shall further receive the sum of five dollars per week, for the boarding and keeping of each convict, to be paid out of the territorial treasury, as before provided. The daily sustenance of convicts shall consist of healthy, coarse food, with such proportion of meat and vegetables as the commissioners shall deem best for the health of the convicts and interest of the territory; no tea, sugar, coffee, tobacco, snuff, spirituous liquors, or any article of indulgence shall be allowed any convict, except by order of the commissioners; and the said keeper of the penitentiary, after receiving any order from the commissioners in regard to the labor or management of the convicts under his charge, shall be bound to execute such order in all cases, as near as the circumstances of the case will permit; and the said keeper shall secure each and every convict, by the means of chains, rings and balls, or any combinations thereof, as he may deem proper for the safe keeping of such convicts.

Allowance of keeper

Food of prisoners.

SEC. 11. Each member of the board of commissioners for the construction of a penitentiary, shall receive five dollars per day for each day he shall serve as such; and, in the payment of his account for services, he shall verify the same by affidavit as to the number of days employed. The presiding commissioner elected as herein prescribed, shall receive, in addition, one hundred dollars per annum, payable quarterly, which compensation shall be paid out of the fund appropriated for the erection of a penitentiary.

Salary of commissioners.

SEC. 12. The board of commissioners shall make a full report in writing of their proceedings to each session of the Legislative Assembly, on or before the third Monday of each session.

Report of commissioners.

SEC. 13. All laws and parts of laws coming within the purview of this act, be and they are hereby repealed.

Laws repealed.

SEC. 14. This act to be in force from and after its passage.

Act, when to take effect.

*Passed January 30th*, 1854.

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## *AN ACT* TO REGULATE INCORPORATED RELIGIOUS SOCIETIES.

SEC 1. Trustees, how appointed.
2 Act, when to take effect.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That it shall be lawful for each religious denomination in this territory, in the appointment of boards of trustees for holding church property, to appoint and keep up said boards of trustees, in accordance with the economy and usages of the said religious denominations, in their separate organizations severally, by giving public notice in the church or congregation, when such boards of trustees are to be constituted, at least two successive Sabbaths previously to the time of organizing such boards of trust,

Trustees.

the time and place of meeting for the objects contemplated in this act to accompany said notice.

Act, when to take effect. SEC. 2. This act to take effect and be in force from and after its passage.

*Passed January 30th*, 1855.

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## *AN ACT* TO EXEMPT OFFICERS AND MEMBERS OF FIRE DEPARTMENT FROM CERTAIN DUTIES THEREIN NAMED.

SEC. 1. Certificate of membership, how issued
2. Exemption of firemen from certain liabilities.
3. Act, when to take effect.

Certificate. SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That whenever the city council of any incorporated city within this territory shall organize a fire department in said city, for the extinguishment of fires, and for the preservation of property in danger by fire, a certificate of membership shall be issued to each of the officers and members of said department, in such manner, upon such conditions, and under such regulations as shall be prescribed by said city council.

Firemen exempt from certain duties. SEC. 2. That so long as any person shall continue a certified officer or member of said fire department, under the regulations prescribed by said city council, such person shall be exempt from military duty, and from service on juries, and from any poll tax.

Act, when to take effect. SEC. 3. This act shall take effect and be in force from and after its passage.

*Passed January 16th*, 1855.

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## *AN ACT* TO CREATE THE OFFICE OF COUNTY SURVEYOR.

SEC. 1. Surveyor, when elected; his term of office.
2. Certificate of election, by whom given; county commissioners to fill vacancy, when.
3 Oath of office; bond; delivery of records, &c., to board of county commissioners.
4. Office vacant on failure to give bond.
5. Bond, by whom taken; when registered.
6 Bond valid till rejection; liability of sureties.
7. County commissioners, when to order new bond to be given.
8. Ib If approved, to be recorded at expense of surveyor.
9. Surveyor to execute all orders to him directed, by court of record or county commissioners.
10. Survey of lot at expense of demandant.
11. Surveys, when legal evidence
12. Court to direct survey of land in dispute, when surveyor is interested.
13. Records of survey, how kept; how numbered; how filed; to deliver copy of, when.
14 & 15 When surveyor of one county may survey lands in another county.
16 Chainman and marker to take an oath.
17. Surveyor may appoint deputies; oath of.
18. County commissioners have power to procure copy of surveys from surveyor-general of United States.

SEC 19. Surveyor, when not to charge for finishing field notes.
20. Copy of field notes, when evidence.
21. Fees of surveyor.
22. Liability of surveyor for not performing duties herein prescribed.
23. Act, when to take effect.

Election.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there be elected, by the qualified electors in each organized county of this territory, triennially, at the general election, some suitable person as county surveyor, who shall hold his office for three years, and until his successor be duly elected and qualified.

Ib. Certificate of.

SEC. 2. The clerk of the board of county commissioners shall certify the election of county surveyor, in the same manner as other county officers, and the person elected shall be commissioned by the board of county commissioners, attested by the clerk; and, in case of a vacancy by death, resignation, or otherwise, it shall be filled by the county commissioners.

Vacancies

Oath.

SEC. 3. Every county surveyor shall, within sixty days after being elected, and before entering upon the duties of his office, take an oath faithfully to discharge the duties of his office as prescribed by law; he shall also enter into bond to the county, in a sum of not less than one thousand, nor more than five thousand dollars, to be determined by the board of county commissioners, conditioned that he will faithfully perform all the duties of the office of county surveyor, and that, at the expiration of his term of service, he, his deputy, executors or administrators, will immediately deliver to the clerk of the board of county commissioners, all the records, books and papers, appertaining to his office.

Bond.

Records to be delivered.

Failure to give bond.

SEC. 4. If any county surveyor fail to give such bond in time prescribed in the preceding section, or, if absent from the county upon business, fail to appoint some suitable deputy, his office shall be vacant.

Bond, by whom taken.

SEC. 5. Such bond may be taken by the clerk of the board of county commissioners in vacation, and, if so taken, shall be approved or registered by the board, at the next term thereof.

Ib. Validity of.

SEC. 6. Such bond shall be valid until it is rejected; and its rejection shall not release the principal and securities from any liabilities incurred previous to its rejection.

Rejection of bond.

SEC. 7. If such bond be rejected, the board of county commissioners shall order the county surveyor to enter into a new bond, within such time as they may think reasonable, not exceeding ten days, and in default of giving such new bond, the office shall be vacant.

Recording of bond.

SEC. 8. If such bond be approved, it shall, with the approval indorsed thereon, be recorded at the expense of the county surveyor, in the recorder's office of the county.

Orders of court and commissioners.

SEC. 9. The county surveyor shall execute all order to him directed, by any court of record, or board of county commissioners, for surveying roads or surveying or resurveying any tract of land, the title of which is in dispute before such court, and all orders of survey for the partition of real estate.

When to survey. SEC. 10. The county surveyor shall, within ten days, when called upon, survey any tract of land or town lot lying in his county at the expense of the person demanding the same: *Provided*, That his legal fees are first tendered.

Surveys, when evidence. SEC. 11. No surveys or resurveys hereafter made by any person except the county surveyor or his deputy, unless attested by two competent surveyors, shall be considered legal evidence in any court within this territory, except such surveys as are made, by the authority of the United States, the territory of Oregon, or by mutual consent of the parties.

Survey when surveyor interested in litigation SEC. 12. When it shall appear that the county surveyor is interested in any tract of land, the title of which is in dispute before the court, the court shall direct the survey or resurvey to be made by some capable person, who is in nowise interested, who shall be authorized to administer oaths in the same manner as the county surveyor is directed to do, and shall return such survey or resurvey, on oath or affirmation, and shall receive for his services the same fees that the county surveyor would do for similar services.

Records of survey, &c. SEC. 13. The surveyor of each county shall: *First*, keep a fair and correct record of all surveys made by himself and deputies, in a book to be by him procured for that purpose; *Second*, number his surveys progressively; *Third*, file and preserve a copy of the calculation of each survey, indorsing thereon its respective number; and *Fourth*, deliver a copy of any survey to any person or court requiring the same, on payment of the fees allowed by law.

Survey by surveyor in other county when SEC. 14. Any person owning lands, where the same are divided by a county line, the person owning or claiming such land, and wishing to have the same surveyed, may apply to the surveyor of any county in which any part of such land is situated; and, on such application being made, the surveyor is authorized and required to make such survey, which shall be as valid as though such lands were situated entirely in one county.

Ib. SEC. 15. When lands, the title of which is in dispute before any court, shall be divided by a county line, the court making an order of survey, may direct such order to the surveyor of any county in which any part of such land is situated.

Oath of chainman and marker. SEC. 16. Each chainman and marker employed by the county surveyor, or his deputy, shall, before he commences the duty assigned him, take an oath or affirmation faithfully and impartially to execute the duties of chainman or marker, (as the case may be,) which oath or affirmation the county surveyor, or his deputy, is authorized to administer.

Deputies. SEC. 17. Deputies may be appointed by any surveyor, who, before they proceed to discharge their duties, shall take an oath, well, truly and faithfully to discharge the duties of deputy surveyors.

County commissioners may procure copy of surveys from surveyor-general. SEC. 18. The board of county commissioners shall have power, in their discretion, to procure from the surveyor-general of the United States for the territory of Oregon, a certified copy of the field notes of surveys lying within their county, relating to a description of the township and legal subdivision, corners, the variations at which the lines were run, the length of the several lines of the several sections, and file the same in the office of the county surveyor.

Surveyor, when not to charge for finishing field notes.

SEC. 19. No county surveyor, thus furnished with field notes, when called upon to execute any survey, shall make any charge for finishing field notes.

Ib. When evidence

SEC. 20. When such copies of field notes are filed in the office of the county surveyor, either by the board of county commissioners, or whether said field notes belong to the said deputy, certified by the surveyor-general, copies ~~of~~ said copies, certified by the county surveyor, shall be evidence.

Fees

SEC. 21. County surveyors shall be allowed fees for their services as follows: For every survey five dollars, and the further sum of five cents per chain, lineal measure, for every chain over eighty chains: for calculating the quantity of each tract of land not divided, $1 00: for calculating each division made in a tract of land, $1 00: for making each plat, 50 cents: for recording plat and certificate, $1 00: for each copy of plat and certificate, 50 cents: for travelling to and returning from place of survey, ten cents per mile: *Provided*, That all expenses of chain carriers and markers shall be paid by the person at whose request the survey is made: for each day necessarily employed in surveying roads and making out the plats, $4 00: *Provided*, That 50 per cent. be added to the above fees for Jackson and Coos counties.

Neglect.

SEC. 22. Any county surveyor who shall fail to perform the duties required of him by this act, shall be fined in a sum not exceeding one hundred dollars, to be recovered by action of debt, at the suit of the injured party.

Act, when to take effect.

SEC. 23. This act shall take effect and be in force from and after the first day of May next.

*Passed January 11th*, 1855.

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## *AN ACT* TO PROVIDE FOR LEVYING AND COLLECTING TAXES IN JACKSON COUNTY.

SEC 1. Tax for Jackson county.
2. Assessment roll, when to be made out.
3. Sheriff to accompany assessor; his duties
4. County commissioners to hear and determine complaints relative to assessments.

Amount of tax

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That there shall be levied in the county of Jackson, in each year, a tax of seven mills on a dollar for county purposes, and one mill for territorial purposes.

When assessment roll to be made.

SEC. 2. The assessor of said county shall, in the months of September and October in each year, make out his assessment roll, appraising the property, and stating the amount of tax due from each person, and shall return said roll complete, to the county auditor, on the first Monday in November thereafter, and it shall be the duty of such assessor to furnish the sheriff with a copy of such assessments as they are made.

Sheriff to accompany assessor.

SEC. 3. The sheriff of said county shall accompany the assessor, and, on receiving the copies of the assessments, shall enter them upon a blank assessment roll, and proceed forthwith to collect the amount of tax due from each person; and it shall be the duty of the sheriff to pay over to the county treasurer, on the first Monday of each month, the amount of taxes in his hands.

County commissioners to determine value of assesement.

SEC. 4. The county commissioners of said county, at their regular meeting in December, shall hear and determine all complaints respecting the valuation made by the assessor, and may correct such valuations as they deem proper, either by adding thereto or deducting therefrom.

*Passed January 16th*, 1855.

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## *AN ACT* TO ENLARGE THE POWERS OF THE CLERKS OF THE DISTRICT AND SUPREME COURTS.

SEC. 1. Deputies, how appointed; to whom responsible; omissions of, how set forth.
2. Clerks and deputies may take proof, &c., of deeds, depositions, &c., and administer oaths.
3. Power of appointing commissioners and settling interrogatories taken from judge; commissioners to be named by parties, unless, &c.
4. Act, when to take effect.

Appointment of deputies.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the clerks of the district and supreme courts are hereby authorized to appoint deputies, who shall have power to do whatever the said principal clerks are or shall be authorized by law to do—the said clerks respectively being answerable for the acts and omissions of their deputies; and, in any proceeding to enforce the liability of any clerk, for any act or omission of his deputy, it shall be sufficient to charge the same as the act or omission of such clerk.

Ib. Liabilities of.

Deputies & clerks may take proof of deeds, &c.

SEC. 2. The said clerks respectively, by themselves, and their deputies, are hereby empowered to take the proof or acknowledgment of deeds, and all other instruments of writing, which may require the same, and to take depositions and affidavits, and to administer all oaths authorized by law or usage, both in term time and in vacation.

Commissioners, how named.

SEC. 3. So much of the thirty-sixth and thirty-seventh sections of the fourth chapter of the Revised Code, as requires an order of the court, or judge, for the taking of depositions, and for the appointment of commissioners, and settling of interrogatories for that purpose, is hereby repealed, and the duty of naming commissioners, if the parties cannot agree, shall devolve upon the clerk who issues the commission.

SEC. 4. This act to take effect and be in force from and after its passage.

*Passed December 21st*, 1855.

## *AN ACT* TO AMEND AN ACT MAKING PROVISION FOR THE CONSTRUCTION OF A TERRITORIAL PENITENTIARY.

Sec. 1. Salary of keepers and deputy keepers; appropriation for their expenses in keeping prisoners
2. Conflicting enactments repealed.
3. Act, when to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That from and after the passage of this act, the keeper of the territorial penitentiary, located at Portland, shall receive the sum of one thousand dollars per annum as a compensation for his services; and the assistant keeper shall receive the sum of six hundred dollars per annum, payable quarter yearly, on the order of the auditor of the territory; and the sum of two thousand five hundred dollars per annum shall be, and hereby is specifically appropriated and set apart to defray and meet the salaries of said keeper and assistant keeper, and of the expenses incurred in the maintenance of the convicts confined in said penitentiary.

Salary of keepers and deputies.

Appropriation for.

Sec. 2. The provisions of any act or acts inconsistent with the provisions of this act, be, and they are hereby repealed.

Repeal of acts inconsistent.

Sec. 3. This act to be in force from and after its passage.

When to take effect.

*Passed January 31st*, 1835.

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## *AN ACT* REQUIRING COMMISSIONERS FOR THE ERECTION OF PUBLIC BUILDINGS, TO PROCURE TITLES TO LANDS ON WHICH SUCH BUILDINGS MAY BE ERECTED

Sec. 1 Commissioners to procure title in fee to territory, before incurring expenditure.
2 Commissioners of university to procure the title, when.
3. Commissioners, not entitled to compensation until this act is complied with.
4. Act, when to take effect.

Section 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That the board of commissioners, appointed to erect public buildings at the seat of government of the territory, shall, before proceeding to expend any of the public moneys for the erection or construction of such public buildings, procure or obtain a good and valid title to the lands on which such buildings are to be erected or constructed, securing the same to the territory of Oregon, in fee simple, without any contingency or reversion.

When to prosecute title.

Sec. 2. That the commissioners appointed to erect or construct the buildings for a territorial university, in the county of Jackson, shall, before proceeding to the erection or construction of the university buildings, obtain or procure a good and valid title to the lands on which such buildings are to be erected or constructed, securing the same to the territory of Oregon, in fee simple, without any contingency or reversion.

Ib. Territorial university.

Sec. 3. That the commissioners, as above named in the first and second sections of this act, shall not be entitled to receive any compensation for their services as such commissioners, until they shall have complied with the provisions of this act.

When entitled to salary

When to take effect.

SEC. 4. This act to take effect and be in force from and after its passage.

*Passed January 26th*, 1855.

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## *AN ACT* TO REGULATE THE MODE OF COMPUTING FREIGHTS, WHEN LOADED, CARRIED AND DISCHARGED UPON THE WATERS OF THIS TERRITORY.

SEC. 1. Freight computed by avoirdupois weight, unless, &c., proviso.
2. Master, owner, or agent, for violating foregoing provisions.
3 Act, when to take effect.

Computation of freight.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That hereafter all boats, vessels, or other water crafts conveying freights for hire, shall compute the quantity of all freight loaded, carried and discharged within the waters of this territory, by the pound avoirdupois, and not otherwise, unless by special agreement of the parties: *Provided*, This act shall not extend to licensed ferry boats, or sea-going vessels.

Penalty for violating act.

SEC. 2. That if any master, owner or agent of any boat, vessel or other water craft, shall violate the provisions of the foregoing section, such master, owner or agent, shall be liable to the party aggrieved in treble damages; such damages, when recovered, shall be a lien upon such boat, vessel or other water craft, until paid.

When to take effect.

SEC. 3. This act to be in force from and after the first day of March next.

*Passed January 12th*, 1855.

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## *AN ACT* TO AUTHORIZE THE SALE OF PROPERTY ON EXECUTION TO TAXES, AND TRANSFER SUIT PENDING IN CASE OF DIVISION OF COUNTIES.

SEC. 1. When sheriff, &c., to sell property seized out of county.
2 Taxes, how collected after division of county.
3. Transfer of certain suits pending in District Court of Washington and Clackamas, to District Court at Clackamas and Multnomah; proviso.
4. Act, when to take effect.

When sheriff may sell property seized in other county

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Oregon*, That when a county has been or shall hereafter be divided, it shall be lawful for a sheriff, constable or other officer to sell upon execution, as in other cases, any personal property in his custody, seized before the division of such county, by virtue of any writ or process issued out of the District Court, or by any justice of the peace, although the property so seized, may, after such division, be without the limits of the county in which such officer resides.

Taxes, how collected after division of county

SEC. 2. When any county has been, or shall hereafter be divided, all taxes which have been assessed and not collected before the division of such county, shall be collected as though such division had not been made, but the collector shall pay the amounts collected by him, after such division, to the treasurer of the county in which the same was collected.

Certain suits to be transferred from Washington or Clackamas, to Clackamas or Multnomah

SEC. 3. Every suit pending in the District Court of Washington or Clackamas county, at the time of the passage of the act creating the county of Multnomah, where neither of the parties now reside in the county in which such suit was commenced, shall be transferred by the clerk of the District Court in which the same is pending to the District Court of the county of Clackamas or Multnomah, in which the defendants, or either of them reside: *Provided*, Such transfer shall not be made, except by agreement of parties, until the party desiring the same, his agent or attorney, shall make an affidavit that neither of the parties to such suit reside in the county in which it was commenced; and in all cases the party making such affidavit, his agent or attorney, shall serve a notice in writing of such transfer, on the adverse party, at least ten days before the term of court at which such suit is to be tried.

SEC. 4. This act shall take effect and be in force from and after its passage.

*Passed January 17th*, 1855.

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